



सत्यमेव जयते

भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India

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## **Report of the Working Group on Individual Insolvency**

(Regarding strategy and approach for  
implementation of the provisions of the Insolvency &  
Bankruptcy Code, 2016 to deal with the insolvency of  
Guarantors to Corporate Debtors and Individuals having  
business)

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August, 2017

# CONTENTS

I. INTRODUCTION.....	3
A. TERMS OF REFERENCE.....	3
B. WORKING PROCESS OF THE WORKING GROUP.....	5
C. STRUCTURE OF THE REPORT.....	6
II. RATIONALE.....	7
III.GENERAL RECOMMENDATIONS .....	11
IV.SPECIFIC RECOMMENDATIONS .....	19
ANNEXURE I.....	...
ANNEXURE II .....	.....

## **I. INTRODUCTION**

### **A. TERMS OF REFERENCE**

1. The Insolvency and Bankruptcy Board of India (“**IBBI**”) constituted this Working Group under the chairmanship of Mr. Amarjit Singh Chandiok, Senior Advocate and President, INSOL India by an office order dated 13<sup>th</sup> June, 2017 to recommend the strategy and approach for implementation of the provisions of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) dealing with insolvency and bankruptcy in respect of (i) guarantors to corporate debtors i.e. personal guarantors, and (ii) individuals having business, and submit a report along with the draft rules and regulations. The composition of the Working Group is provided in the office order dated 13<sup>th</sup> June, 2017 at **Annexure I**.

2. The Working Group noted that the legislative provisions of the Code, defines a “creditor” to mean any person to whom debt is owed and includes financial, operational, secured, and unsecured creditor and even a decree holder. Part III of the Code, which deals with insolvency resolution and bankruptcy for individuals and partnership firms, adopts the same definition of “creditor” as given in Section 3(10) of the Code. Part II of the Code for the purposes of this part, defines “financial creditor” under Section 5(7) and also defines “financial debt.” However, in Part III there is no separate definition of the creditor. The Code, therefore, does not contemplate categories of individuals or partnerships within Part III of the Code. The only distinction created by the Code is that the Adjudicating Authority for Insolvency and Bankruptcy of personal guarantor of a corporate debtor is National Company Law Tribunal (NCLT) in cases where a corporate insolvency process has been initiated or is pending against the corporate debtor of personal guarantor. In cases where there a corporate insolvency process is not pending against the corporate debtor, the jurisdiction in respect of Insolvency and Bankruptcy of personal guarantor is Debt Recovery Tribunal. For other individuals and partnership firms, the jurisdiction is vested with the Debts Recovery

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Tribunal (DRT). The Working Group, consequently, considered preparing a single draft each of rules and regulations applicable to insolvency and bankruptcy of individuals and partnership firms. The Working Group however, recognizes that dynamics, the interwoven connection between the corporate debtor and a guarantor (who has extended his personal guarantee for the corporate debtor) and the partnership firms engaged in business activities may be on distinct footing in reality, and would, therefore, require different treatment, because of economic considerations. Assets of the guarantor would be relevant for the resolution process of the corporate debtor. Between the financial creditor and the corporate debtor, mostly the guarantee would contain a covenant that as between the guarantor and the financial creditor, the guarantor is also a principal debtor, notwithstanding that he is guarantor to a corporate debtor. Therefore, the liability is joint and several, and the guarantee furnished by a person to the corporate debtor can be invoked even prior to resorting to the corporate debtor. Partnership firms, which are collective ventures of the partners, engaged in business activities, are also likely to have number of creditors, requiring resolution in terms of the Code. The Working Group stayed mindful of these factors while making recommendations and suggesting draft rules and regulations, which form part of this first report.

3. It may become necessary that when the provisions of Chapter III of the Code are made operative and implemented, the Presidency Town Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, would have to be ‘repealed.’ Once provisions of Chapters III to V, Part III of the Code are notified excluding Section 179 to 183, it would be clear that the Code would become operational only in respect of individuals who have given personal guarantees to corporate debtors and in conformity with the legislative intent, are subjected to the jurisdiction of the Adjudicating Authority, namely, NCLT. In order to start proceedings before the Debts Recovery Tribunal with respect to individuals and partnership firms engaged in business activities, Sections 179 to 183 of the Code would have to be made operational and implemented excluding their application to the individuals and partnership firms without business activity. Individuals and partnerships without business activity would thus remain out of the applicability of the Code and consequently, the Presidency Town Insolvency Act, 1909 and Provincial Insolvency Act, 1920 may continue to apply to them. The resultant effect of the above is that the Presidency Town Insolvency Act, 1909 and Provincial Insolvency Act, 1920 would have to be repealed in phases. In its present form, Section 243 of the Code does not specifically provide for phased repeal of the Presidency

Town Insolvency Act, 1909 and Provincial Insolvency Act, 1920. Section 243 of the Code provides for repeal with a saving clause that the proceedings presently pending under the aforesaid the two statutes shall continue to govern under the said two statutes and be heard and disposed of by the concerned courts or tribunals, as if the aforementioned Acts have not been repealed. In the absence of specific language providing for repeal of the provisions of the Presidency Town Insolvency Act, 1909 and Provincial Insolvency Act, 1920, this Central Government can exercise its power under Section 242 of the Code, and issue a removal of difficulties order continuing the applicability of the Presidency Town Insolvency Act, 1909 and Provincial Insolvency Act, 1920 *qua* individuals for a limited duration of time. Section 242 of the Code gives a wide power to the central government to pass an order to remove any difficulties that may arise in giving effect to the Code, provided that such order does not make provisions inconsistent with the Code.

4. In the interest of time, the Working Group decided to divide its work into two phases:

(i) drafting the rules and regulations, and a report for the *insolvency resolution process* of individuals and partnership firms; and (ii) drafting of the rules and regulations, and final report for the *bankruptcy process* of individuals and firms. This report pertains to the drafting of the rules and regulations, and a report for the *insolvency resolution process* of individuals and partnership firms (“**First Report**”). The Working Group will shortly submit an additional report pertaining to the draft rules and regulations, for the *bankruptcy* of individuals and partnership firms (“**Second Report**”).

## **B. WORKING PROCESS OF THE WORKING GROUP**

5. The Working Group had its first meeting on 21<sup>st</sup> June, 2017. Smaller Group of the Working Group met many times. There were four subsequent meetings. The Group received comments and inputs from its members. Comments and inputs from its members were received and the final draft of the Draft Rules and Draft Regulations and the Report have been prepared. The Working Group would like to thank INSOL India for providing logistical support to the Working Group for holding its meetings. The Working Group would like to thank Ms. Ranjeeta Dubey, Deputy General Manager, IBBI for her assistance in coordinating the meetings of the Working Group. The Working Group would like to

place on record its appreciation for the assistance rendered by the Vidhi Centre for Legal Policy in the drafting of the Draft Rules and Regulations.

### C. STRUCTURE OF THE REPORT

6. The report is divided into five parts. The first part discusses the terms of reference of the Working Group, its working process and the structure of the report. The second part of the report delves into the rationale for the approach adopted for drafting of the rules and regulations for the insolvency resolution process. The third part lays out the general recommendations of the Working Group, and the fourth part elaborates upon the specific recommendations of the Working Group in relation to the draft rules and regulations. General recommendations made in the third section are suggestions made to improve the overall efficiency and efficacy of the insolvency resolution and bankruptcy processes. Some General recommendations require amendments in the Code. Others can be implemented without amendments as mentioned wherever relevant. The General recommendations are considered more relevant in respect of insolvency and bankruptcy of individuals other than those who have extended personal guarantee to corporate debtors, or individuals being partners in partnership firms engaged in economic activities. The Specific recommendations and the draft rules and regulations suggested by the Working Group are not dependent on or conditional upon proposed amendment. Specific recommendations can be implemented on the basis of the current provisions of the Code. The fifth part of the report consists of two annexures. Annexure II contains the recommended draft rules i.e. Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Individuals and Firms) Rules, 2017 (“**Draft Rules**”) and Annexure III contains the recommended draft regulations i.e. (ii) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017 (“**Draft Regulations**”), for Chapter III of Part III of the Code.

### II. RATIONALE

7. Understanding the nature and composition of credit extended by financial institutions and other lenders to individuals and partnerships have implications for effectively designing the procedural aspects of insolvency resolution of individuals and partnerships under the

Code. The Working Group noted that while the fast track provisions of the IBC apply only to limited liability companies and limited liability partnerships, as per data available in public domain<sup>2</sup>, over 97 percent Indian Small Scale Industries<sup>3</sup> are proprietorships or partnerships. Proprietorship is the most commonly adopted ownership structure (94.5 percent of all Small Scale Industries). The other ownership structures adopted by enterprises include partnership and cooperative (1.2 percent), private and public limited company (0.8 percent) and other forms (3.5 percent). In 2009-10, the Indian Micro, Small and Medium sector (“MSME”) was estimated to include 29.8 million enterprises out of which 28 million are unregistered and only 1.8 million registered. MSMEs vary in size and nature. Most fall into the “micro” category, which usually includes sole proprietorships and single-employee businesses. Small enterprises may have more than one owner and multiple employees but may have an informal business structure. Firms at the other end – labeled as “medium” enterprises – may be starkly different from their micro and small counterparts and have hundreds of employees. Yet they may not be corporatized. MSMEs, for a variety of reasons, forgo formal registration of their enterprise and operate without limited liability. These MSMEs are therefore, likely to be biggest consumers, and expected to be the biggest beneficiaries of the law relating to insolvency and bankruptcy of individuals and partnership firms as and when notified. MSME insolvencies cannot be treated at par with corporate resolution as MSME insolvency face unique challenges and issues.

8. As for individuals, the data from the Quarterly BSR-1: Outstanding Credit of Scheduled Commercial Banks released by the Reserve Bank of India (“**RBI**”) (This is a quarterly data series, from March, 2014 till September, 2016) provides the composition of bank lending by organisation, occupation, loan size, interest rate bands and regions. RBI classifies household (HH) sector credit into three categories. These are credit to: (1) individual borrowers, (2) proprietary concerns, joint families and unregistered partnerships, and (3) joint liability groups (JLG), NGOs and trusts. HH sector credit is large, both in terms of value and accounts. In September, 2016, credit to the HH sector was Rs.32.2 trillion, accounting for 44.3% of the total credit given by banks. In terms of number of loan accounts, HH sector accounts were 98% of the total accounts of the banking system (Table 1). Within

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<sup>2</sup> 3<sup>rd</sup> Survey of Ministry of Small Scale Industries (2001-2002). The Ministry of Small Scale Industries is now designated as Ministry of Micro, Small and Medium Enterprises.

<sup>3</sup> Prior to the enactment of The Micro, Small and Medium Enterprise Development Act, 2006, the category of Small Scale Industries only was defined.

the HH sector, credit to single individual borrowers was the largest component, both in terms of value and in terms of accounts.

**Table 1: Household sector credit in India**

Categories	Loan accounts (Rs. million)	Loan value (Rs. trillion)
Total bank credit	143.7	72.7
O/w credit to HH sector	140.2	32.2
- Individuals	134.3	25.2
- Proprietors/ partnerships	3.0	6.3
- JLGs, NGO, Trusts	2.9	0.7

Source: RBI Quarterly BSR-I: Outstanding Credit of Scheduled Commercial Banks (March, 2014 till September, 2016, BSR I, Table 1.6)

9. The RBI Data also shows that *bank credit to HH sector is growing at a faster rate than credit to the corporate sector.*<sup>[L][SEP]</sup> In the last six quarters, from Q1 2015 to Q2 2016, bank credit to the HH sector has seen an average quarter-on-quarter (Q-o-Q) growth of 3%. By contrast, in the same period, bank credit to non-HH sectors has only seen a Q-o-Q growth of 0.3%. *Bulk of HH sector credit is given as agri loans and personal loans.*<sup>[L][SEP]</sup> Personal loans (mostly in the form of secured housing and vehicle loans) and agri loans account for Rs. 22 trillion or 67% of the total bank credit to the HH sector. Average loan sizes are relatively small, Rs. 1.2 lakh per loan for agriculture and Rs. 2.6 lakh per loan for personal loans. The remaining 33% is spread mainly across three sectors: industries (12%), trade and transport (13%) and professional services (6%). These loans are in the nature of business loans. Within industries, most loans are given to proprietors and partnerships, and at an average of Rs. 9.3 lakh loan size, are relatively large. In trade, transport and services, average loan size is between Rs. 3.5 to Rs. 5 lakh per loan. Southern and western regions account for more than 60% of *agriculture and personal loans, by value and by accounts.* 38% of agriculture and personal loans by value, and 46% of the loan accounts, are in the southern region. 24% of loan value and 19% of loan accounts are in the western region.<sup>[L][SEP]</sup> In case of personal loans, 58% of loan accounts and 51% of loans by value are given in metropolitan areas. These are centers with population of 1 million or more. *Agri credit is largely short*



*tenure whereas personal loans are medium to long tenure. 70% of agriculture credit is given in the form of cash credit or as demand loans. In contrast, more than 80% of personal loans are medium to long tenure loans.*<sup>4</sup>

10. It is clear from the above that there is a large segment of individual debtors in the system. The approach of the provisions dealing with insolvency and bankruptcy for individuals and firms (referred to as individual insolvency resolution process, and encapsulated in Chapter III read with Chapter I, of Part III of the Code) differs from the corporate insolvency resolution process. The distinction lies in the fact that unlike companies which are separate legal entities, from the individuals who promote them and thus may be allowed to be wound up, debtors involved in the individual insolvency resolution process do not have such separate legal existence. Insolvency of organised entities is driven almost exclusively by economic concerns but insolvency relief for individuals include elements of humanitarian empathy. Business insolvency rules are often crafted on the usually unstated assumption that the actors involved, including the debtor, are fully rational and informed economic actors. Individuals, however, seldom behave in a way consistent with the classical economic ideals on which business insolvency systems are founded. Besides, insolvency regimes for individuals may implicate salient issues of data protection and personal privacy. A whole host of social and economic regulatory issues, such as individual counseling, education, social welfare provision, cultural and religious sentiments and family and housing policy are involved. Individual insolvency directly impacts the social fabric whereas corporate insolvency has a direct bearing on the economy. This crucial difference forms the basis of the approach to be meted out to individual and firms during their insolvency. Further, insolvency of individuals demands a process that is easily accessible, simpler and cost effective.

11. Within the individuals and partnership firms, the dynamics, conditions and factors involved in the insolvency and bankruptcy of individuals that have extended person guarantee to corporate debtors and partnership firms engaged in business activities are likely be different from ordinary individuals or partnership firms. Therefore, personal guarantors and individuals who are partners in partnership firms carrying out economic activities may require a somewhat different treatment due to economic considerations, number of creditors

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<sup>4</sup> <https://ajayshahblog.blogspot.in/2017/03/the-size-of-personal-bank-credit-in.html>

involved, personal guarantee and assets of guarantors, if any and other relevant factors involved. The Working Group remained mindful of this distinction while making recommendations.

12. Providing relief to “honest but unfortunate” debtors has long been a primary purpose of insolvency regimes for individuals. Unmanageable debt burdens cause a host of problems for debtors. Constant anxiety arising from inability to pay or from harassment by creditors can cause serious emotional and other problems for debtors, including depression and social withdrawal. Ironically, overwhelming debt burdens might cause debtors to be unable to concentrate on work and other responsibilities, thus preventing them from responsibly managing their own financial distress and plunging debtors into a descending spiral of failure.

13. India is one of the oldest civilisations in the world. It is also one of the fastest growing economies. It is also maturing as an economy. A country as diverse as India has a unique social fabric that is deeply embedded with values that have survived time and change. The insolvency law of the country must approach and treat its honest but unfortunate citizens with sensitivity. The Working Group views the provisions relating to insolvency resolution and bankruptcy of individuals and partnership firms under the Code in the light of the above discussion. The Working Group has no hesitation in stating that the rules and regulations relating to insolvency resolution and bankruptcy should be friendly to honest and unfortunate debtor.

14. The Code encourages an 'earned start' for the debtor, where she restructures her debts or affairs or both on the basis of a repayment plan, and obtains a discharge as per the Code, to resume life afresh. The insolvency resolution process and bankruptcy should aim to reduce or eliminate the artificial causes of problems identified above. If a neutral arbiter, such as the mediator or the Adjudicating Authority confirms that the debtor is not able to pay, or that a more rational, long-term repayment plan is appropriate, the acute stress of constant creditor pursuit of immediate payment should be alleviated. A process for coordinating and humanizing the individual insolvency resolution process can put debtors on a healthier path to supporting themselves, addressing their obligations in a more measured and regular way, and participating in society rather than viewing themselves as victims of it.

15. Some debtors will attempt to evade their obligations by seeking insolvency relief when they could address their obligations through reasonable sacrifices and modifications to their budgets and lifestyle choices. Some danger of moral hazard (and fraud, see below) will be present in any system, but these slippages should not overshadow the substantial benefits of providing relief to those debtors who have tried and failed due to factors largely or entirely beyond their control. Care should be taken to avoid sacrificing the great good of such a system simply because perfection cannot be assured. Isolated instances of debtor fraud are present in virtually every system that has ever existed, and perfect exclusion of fraud is not an achievable goal. Some undeserving debtors may take improper advantage. This has not dissuaded policymakers from pursuing the greater good of relief for the majority of honest but unfortunate debtors who can derive legitimate benefit—and pass on significant benefits to creditors and society.

The above rationale has influenced the thinking, approach and recommendations of the Working Group.

### **III. GENERAL RECOMMENDATIONS**

#### **A. MEDIATORS**

16. Individuals often lack financial and legal sophistication and insolvency procedures frequently require production of financial and legal documents as well as navigation through complex legal processes. The Working Group is of the view that non-judicial assistance is crucial and insolvency law for individuals and partnership firms should encourage informal negotiation and resolution to enable the creditors and debtors to bargain in the shadow of insolvency. The majority of insolvency and bankruptcy proceedings involving individuals may not involve contentious issues, voluminous stakeholders, and high amount of debt or disputes justifying adjudication by authorities such as the DRT. These issues might well be more efficiently resolved with the intervention and assistance of a trained cadre of mediators. Only issues that remain unresolved or legal issues that require adjudication by a quasi-judicial authority could be referred or appealed to such quasi-judicial authority. Mediation assistance may be rendered *pro bono* in certain cases as if so directed by the Adjudicating Authorities.

17. Vesting Debt Recovery Tribunals with jurisdiction to deal with insolvency and bankruptcy of individuals and partnership firms is likely to hamper efficient access to resolution and bankruptcy, the cost-effectiveness and the desired speed of the process. DRTs are located in state headquarters. Traveling long distance from a village or small town to file or participate in an insolvency proceeding involving small amounts will be time-consuming and rigorous. Moreover, DRTs are already over-burdened with work and suffering from backlog. To add this massive jurisdiction to their existing work will impair the quality of their existing jurisdiction.

18. Therefore, the Code should provide for a time bound mediation process, which recognises debt negotiation and settlement framework. The Adjudicating Authority may be empowered to seek assistance from recognised institutions carrying out mediation activities. There are many advantages of this informal system. The debtor may have an incentive to make a higher offer to creditors by avoiding the court procedure, which would benefit the creditors. The debtor may also be able to avoid the stigma of insolvency. The costs of informal settlement negotiations are less than that of a court procedure as it saves both time and resources.

19. **The Working Group therefore recommends:**

*(i) The Code should be amended to provide for time bound mediation in respect of insolvency of individuals and partnership firms as may be prescribed. [We should recommend there should be a standstill during mediation].*

*(ii) A new cadre of professional mediators should be recognised to oversee the individual and partnership insolvency resolution process in place of Adjudicating Authority in prescribed cases. Only cases involving above the prescribed debt may be filed directly before the Adjudicating Authority.*

*(iii) The cadre of mediators should be licenced and regulated by the Insolvency and Bankruptcy Board of India.*

*(iv) The Insolvency and Bankruptcy Board of India may recognise certain mediation centres to provide mediation facility.*

*(v) The Central Government may consider amending the Code to designate the head of district judiciary, by whichever other name called, as the Adjudicating Authority in place of Debt Recovery Tribunal. The district judge may designate a judge not below the rank of additional district judge as the Adjudicating Authority for the purposes of the Code.*

## **B. COUNSELLING**

20. The Working Group is of the view that counseling is a critical component of individual bankruptcy. It is essential not only to prevent repeat bankruptcies but also to further rehabilitative goals of behavior modification. There are mainly two kinds of counseling required in insolvency and bankruptcy – debt counseling and social counseling. Debt counseling is based on the assumption that bankruptcy is a consequence of imprudent or unwise use of credit or the need for individuals to adapt their credit behaviour to more desirable norms. Social counseling is part of the welfare state regime. It is usually combined with access to other social services, because debtors may need information about, and referrals to, services such as social security and assistance, low-cost housing, guidance on coping up with the changes in social status, response to behaviour of immediate family, friends and members of community, treatment for substance abuse, marriage counseling, etc.

21. Counseling is a known practice prevalent in most sophisticated jurisdictions. The US National Bankruptcy Commission in the late 1990s endorsed the introduction of counseling on a voluntary basis. Canada pioneered in 1992 the legislative introduction of two counseling sessions during bankruptcy for individual bankrupts. Singapore also requires counseling in personal insolvency. In Canada the trustee (or their delegate) must now: (1) make a pre bankruptcy assessment outlining options including that of a consumer proposal (repayment of a portion of debt usually over three years), (2) provide an initial counseling session shortly after bankruptcy is declared entitled consumer and credit education and (3) a second session shortly before discharge which normally takes place nine months after the declaration of bankruptcy. Counseling is financed by a fee, which comes out of the bankruptcy estate. Counseling is a condition for receiving a discharge. In Germany, counseling is considered an important aspect of individual insolvency. Some social banks, notably municipal banks in the Netherlands, provide counseling. In many countries debtors are required to make an effort to reach a voluntary settlement with their creditors before they are allowed to file for

formal insolvency relief. A debt counselor is usually available and obliged to assist the debtor in the negotiations for a voluntary settlement. In some countries, the attempt to reach a voluntary settlement is regulated in a more formal framework, such as a commission for over-indebtedness or the debt enforcement authorities. In others, debtors are left to find counseling and negotiation support from semi-private or private sector actors.

22. The impact of insolvency on a debtor would be significant, given that there would be a stigma attached to being involved in the process. The Working Group is of the opinion that counselling should be encouraged for the stakeholders in the insolvency resolution process. For debtors, this would include not only counselling on whether to enter the process, or manage finances and information during the process, but also broader counselling to cope with the potential loss of property and reputational consequences. The IBBI may take the initiative to identify agencies that may be able to provide the required counselling to debtors, and possibly even creditors. The Working Group discussed the feasibility of making the counselling mandatory, given the nature of debtors. However, it recognised that resource constraints may not allow mandatory debt counselling at this stage, but it could be introduced gradually.

23. **The Working Group recommends that:**

*(i) a cadre of qualified, licensed and trained counselors be established by making suitable regulations.*

*(ii) The cadre of counsellors should be licenced and regulated by the Insolvency and Bankruptcy Board of India.*

*(iii) The counsellors should be bound by the code of conduct to be prescribed by the Insolvency and Bankruptcy Board of India.*

*(iv) The counselling should be optional or in pre and post commencement stages of insolvency and bankruptcy although gradually, once adequate capacity exists, it may be made mandatory in due course.*

*(v) Additionally, the Working Group also suggests that the Board explore the idea of setting up forums or help desks to assist applicants in filing applications and understanding the insolvency resolution process under the Code.*

### **C. STIGMA**

24. The notion of announcing one's failure, either in writing or in person before public can be a deeply embarrassing and stigmatizing one, leading to severe hurt, feelings of guilt, shame, and stigma. These feelings act as powerful disincentives to debtors in seeking insolvency relief. Indeed, if inability to pay is dealt with through private cultural traditions, or if a powerful stigma is associated with debt and admission of failure, an "official" mechanism for administering such problems may turn out to be superfluous, as debtors and creditors alike refrain from using it. The insolvency law should be particularly sensitive to the cultural context of shame and stigma in the context of admission of financial failure, as these notions can prevent the effective participation of debtors.

#### **25. The Working Group is of the view that**

*(i) an aggressive and persistent systemic campaign of public information to educate citizens about the objective of the insolvency and bankruptcy law should be launched all over the country to overcome the potential problem of stigma.*

*(ii) the citizens should be sensitised and educated through literature and other educational mediums including as part of financial literacy initiatives of the Central and State Governments and Financial Literacy and Credit Counselling Centres;*

*(iii) Attitudes about debt and cultural stigma change slowly, and relatively little can be done to effect such an expansive and disperse notion directly, but policymakers can make and have made choices to minimize stigma by avoiding or repealing judgmental language and punitive measures in existing laws, such as by referring to the "debtor" as opposed to the "bankrupt," or by reducing post-relief restrictions on activity by debtors.*

*(iv) delete stigmatizing elements from a number of legislations that subject debtors to a long list of civil disabilities and restrictions following an insolvency, thereby reducing in*

*part the stigma. This would require amendments in many legislations. A separate expert legal group may be constituted to identify such legislations and rules.*

#### **D. FINANCIAL LITERACY**

26. Another topic closely related to treatment of insolvency is prevention of insolvency. The policies should incorporate a desire to attempt to address insolvency by avoiding it altogether through financial literacy training. Financial literacy education is crucial not only for treating existing insolvency, its primary purpose is to prevent its recurrence as well.

*27. The Working Group recommends that the Central Government and IBBI should promote financial education in particular about insolvency by collaborating with stakeholders and other institutions operating in the space/ecosystem/.*

#### **E. INSOLVENCY AND BANKRUPTCY FUND**

28. Many individuals have difficulties in financing access to insolvency. From the deliberations of the Working Group it emerged that individuals and partnership firms may not have adequate and readily available resources, including financial resources to meet even the basic cost of insolvency and bankruptcy. Where the amount of debt that leads to initiation of insolvency is small, it flows from the fact that the debtor is struggling with financial crisis. In such cases, it is the responsibility of the State to support such debtors so that they are not deprived of access to the recourse available under the Code or in effective participation in the insolvency resolution and bankruptcy process. The assistance and support required in the individual insolvency and bankruptcy process is different from legal aid but may have some common elements such as safeguarding the right to access justice.

29. Various approaches to financing exist, such as, state funding of the process; cross-subsidization of low value insolvencies by higher value estates; state subsidies to professionals involved in the process and writing off court costs where there is an inability to repay; and no state support beyond any general public good funding of the court system.

30. The Working Group is of the opinion that one of the objectives of the Insolvency and Bankruptcy Fund (“Fund”) set up under Section 224 of the Code is to serve the above



purpose. The Fund should be utilised to assist debtors and applicants who may not have the capacity to bear the cost for the insolvency and bankruptcy process, and also possibly the remuneration of the resolution professional and bankruptcy trustee in certain cases.

31. **Therefore, the Working Group recommends**

*(a) the notification of the Insolvency Fund be expedited;*

*(b) the Insolvency and Bankruptcy Fund should be utilised to assist debtors and applicants who may not have the capacity to bear the cost for the process, and also possibly the remuneration of the resolution professional in certain cases.*

*(c) The eligibility of a debtor or applicant to avail benefits from the Fund should be left to the Adjudicating Authority;*

*(d) The utilised fund should be recovered as cost of resolution or bankruptcy, as the case may be.*

## **F. THRESHHOLD FOR FILING INSOLVENCY**

32. Another issue that engaged the attention of the Working Group is the low threshold of Rs.1000 for filing insolvency. Such a lower bar for invoking insolvency law could burden the resources and the system with large number of cases.

33. *The Working Group recommends that the Central Government may consider*

*(i) raising the entry bar to Rs. 10000;*

*(ii) Alternately, for any amount below Rs. 10000, the proceedings should be limited to mediation.*

## **G. MONITORING MECHANISM**

34. Confirmation of a repayment plan may not be the end of the matter. Debtors who struggle to budget and distribute proper payments to creditors before an insolvency

procedure are likely to struggle afterward, as well. To facilitate proper implementation of, and debtor compliance with, a plan, a neutral insolvency representative is most commonly appointed to monitor and even collect and distribute payments for creditors. Generally, the insolvency collects periodic payments made by debtors on their own, though some systems require or allow for plan payments to be formally assigned to the representative and automatically deducted from debtors' periodic income to ensure timely payment. The insolvency representative also divides these collected amounts for distribution to individual creditors and is responsible for actually making the payments (often electronically). After early experiments with more frequent payments to creditors, many systems have settled on annual distributions, both to reduce cost and because more frequent distribution often result in very small payments to creditors. The processing fees for these payments can exceed the amounts transferred to the individual creditors unless larger payments are allowed to accumulate over a longer period.

#### **H. SEPARATE PROCEDURAL RULES FOR ADJUDICATING AUTHORITY UNDER THE CODE**

35. Currently, certain rules of procedure for the National Company Law Tribunal and the Debt Recovery Tribunal notified under the relevant laws are being followed<sup>5</sup> by the Adjudicating Authority for dealing with cases under the Code (Rule 10 of the draft rules). Since cases under the Code are specific to insolvency and bankruptcy, they require separate rules that appreciate the specialised approach to insolvency that is not based on adversarial approach or standard procedures. The Working Group is of the view that the rules for insolvency cases should be tailor made and customised.

36. *The Working Group recommends that the Central Government may consider notifying:*

*(a) a separate set of rules governing the procedure to be followed by the Adjudicating Authorities for insolvency and liquidation / bankruptcy cases under the Code, for corporate as well as personal cases.*

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<sup>5</sup> Rule 10, Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

37. *The Working Group recommends that the following mismatch in certain provisions of the Code may be addressed through a removal of difficulty order by the Central Government:*

- (i) Delete the words “sub-section (1) or” from Section 98(5) of the Code; and*
- (ii) In Section 113 of the Code, reference to Section “99” be replaced with Section “112” as there is a cross reference error.*

38. The Working Group also noted the difficulty in reading of the language of the provisions of the Code relating to insolvency of individuals. The Working Group recommends these may be addressed by amendment as and when considered appropriate by the Central Government:

- (i) Sub section (4) of section 100(4) states “that the application was made with the intention to defraud his creditors or the resolution professional...” These words limit the grounds on which the Adjudicating Authority from passing the order which is not what the intention of this section is. Therefore, it is suggested that the text of sub section (4) of section 100 be replaced with the following text:

*“If the application referred to in section 94 or 95, as the case may be, is rejected by the Adjudicating Authority on the basis of the report submitted by the resolution professional, the order under sub-section (1) may record that the debtor or the creditor is entitled to file for bankruptcy under Chapter IV”*

#### **IV. SPECIFIC RECOMMENDATIONS**

##### ***A. Forum and applicability (Rule 3(1)(a) of the Draft Rules and Regulation 2(1)(a) of the Draft Regulations)***

39. The Draft Rules and Draft Regulations for the insolvency resolution process are applicable to all individuals and firms. Within individuals, for a a class of debtors i.e. personal guarantors of corporate debtors, the Adjudicating Authority (as provided in Section 60 of the Code) is the National Company Law Tribunal (“NCLT”) where an insolvency or

liquidation proceeding is against a corporate debtor. This is to provide that proceedings regarding a common debt for which a corporate debtor and personal guarantor are liable are heard and dealt with in the same forum. In light of the above, the Draft Rules and Draft Regulations provide that the NCLT is the forum for personal guarantors falling within the ambit of Section 60(2) and 60(3) of the Code, and in all other cases of other individuals and firms, the relevant forum is the Debt Recovery Tribunal (“DRT”). *The Working Group is of the view that in both forums, same Draft Rules and Draft Regulations relating to personal insolvency resolution process will be applicable and no separate rules or regulations can be provided just because the Adjudicating Authority is different. .*

#### **B. Application fee (Rule 12 of the Draft Rules)**

40. The Working Group debated various figures as application fees, and discussed linking the application fees to the amount of debt. However, it was felt that an *ad valorem* basis for the application fee may become complicated, and an applicant may find it difficult to make this calculation. Additionally, it was felt that the application fee should ensure that process remains accessible, and does not act as a disincentive for potential applicants. *Therefore, the Working Group recommends that the application fee for insolvency resolution before a Debt Recovery Tribunal be set at INR 100 (Rupees one hundred) and the application fee for initiating an insolvency resolution by a personal guarantor under Section 60(2) and 60(3) before the National Company Law Tribunal be set at INR 1000 (Rupees one thousand).*

#### **C. Excluded assets (Rule 9 of the Draft rules)**

41. The notion of exempting some of the debtor’s property from liquidation and distribution to creditors is closely tied to the discharge principle. The use of an exemption mechanism that allows the debtor to claim exempt property from certain categories and up to certain values has the advantage of general fairness. This approach may be of interest in India in which many insolvent individuals may be from middle-class with many assets. However, this fairness comes at the expense of efficiency because there can be disagreement between the debtor and the resolution professional (or the debtor’s creditors) when the debtor tries to maximize benefits under the broader categories. Another weakness of this approach is that the limits on the value of exempt assets that may be excluded from the estate are often too

low, or become too low over time if their values in the legislation are not increased to keep in line with inflation. When that happens, the practice in some systems is to stop strictly enforcing the exemptions and to allow debtors to retain more than their statutory entitlement. In some countries that have experienced hyperinflation, the system includes artificial or notional measures of value—i.e., a unit of value whose value is regularly updated by the Government—in order to avoid the problem.

42. The concept of excluded assets is defined in section 79(14) of the Code, which sets out certain assets of a debtor, which are exempt for the purposes of Part III of the Code. According to the section, out of the five categories, two categories require a threshold value to be prescribed, up to which the assets will be exempt from the process. The first category is the unencumbered personal ornaments used by the debtor and her immediate family of a prescribed value, which cannot be parted with because of religious restrictions, and the second category is an unencumbered single dwelling unit of prescribed value owned by a debtor.

43. The insolvency resolution process for individuals is aimed to be based on a more humane approach, and thus take into account the immense non-monetary value that may be attached to items such a dwelling house, or personal ornaments. Further, the value that such a property may hold for a debtor, may be much more than just the monetary value that it may hold for the creditor. Often, ancestral property would form part of a dwelling unit, and it would cause great loss to the debtor if it is taken over or disposed of as a part of the bankruptcy process, or even in the course of the repayment plan. Similarly, there may be personal ornaments which have great sentimental and religious value to a debtor. ***The Working Group is of the view that it was necessary to keep this in mind while drafting the subordinate legislation around excluded assets in the individual insolvency resolution process, and thus recommends that excluded assets within the prescribed threshold value cannot be sold or transferred under the repayment plan.***

44. The Code requires the threshold values to be prescribed for the abovementioned categories of excluded assets. The Working Group is of the opinion that it is more appropriate to seek comments from the public for the threshold value for unencumbered personal ornaments under Section 79(14), instead of prescribing an amount at the outset.

*Therefore, it is recommended that the inputs for the threshold value for personal ornaments be sought from the public.*

### *Dwelling*

45. Debtors' homes are usually their most valuable asset and, in many cases, the asset in which debtors have lost the most equity. It is arguably also the most important asset psychologically, for the home provides shelter for the family and serves as the family meeting point. Thus, losing one's home in foreclosure or insolvency can take a significant toll on a debtor. The family home is thus arguably one of the most important assets to be protected. The family home often involves complicated matters involving joint ownership and the related issues of whether (and how) creditors can seek a partition of the joint assets or a split of the assets between the insolvent and the non- insolvent party.

46. For the threshold value relating to a single unencumbered dwelling unit owned by the debtor, the Working Group agreed that prescribing a uniform or single value for a dwelling unit would not be appropriate. Further, it was felt that the primary goal under the Code is to exempt a dwelling unit used as a consumption asset, necessary for the sustenance of the debtor and her family. Through the valuable inputs by Institute of Financial Management and Research, an all-encompassing formula has been arrived at, which takes into account the size of the family of the debtor, the minimum area required for each member of the family and the circle rate.

47. The formula has been incorporated as a schedule to the draft rules, and the rationale for the formula is elaborated below:

#### 1. Calculation of threshold value

##### *Step 1: Minimum threshold area*

The threshold value is proposed to be calculated for each individual debtor, which will be linked to the area required by such debtor (based on the size of her family) and the circle rate for the area in which her dwelling unit is situated, adjusted to take into account the current market transactions.

48. The minimum carpet area required for households has been extrapolated from government housing schemes (such as guidelines under the Pradhan Mantri Awaas Yojana) as well as relevant census data. Based on these factors, it is proposed that the minimum carpet for a household having four members is 300 square feet for rural areas and 400 square feet for urban areas. In case of a larger family, every additional family member may be allotted an additional 75 square feet, subject to a maximum cap on the area of 750 square feet for rural areas and 1000 square feet for urban areas.

*Based on the size of the family of the debtor and area of residence, a threshold area (subject to the maximum areas mentioned above) will be calculated for the debtor.*

*Step 2: Minimum threshold value*

49. The threshold area thus calculated will then be multiplied with the circle rate for the lowest residential category in each zone. It is assumed that the circle rate will be a proxy for the value of a subsistence dwelling unit. The circle rate will be adjusted with the House Price Index (“HPI”) released by the RBI every quarter (for 10 cities of the country). The rationale is that the circle rate may not be updated to reflect realities in property prices, whereas the HPI is updated regularly and can help adjust the value for current market transactions.

*Therefore, threshold value of the dwelling unit = size of dwelling unit adjusted for size of debtor’s family x circle rate for lowest residential category in that zone/area adjusted by latest HPI.*

2. Calculation of actual value

50. The actual value of the dwelling unit owned by the debtor would then be ascertained, so as to compare it with the threshold value. The methods to arrive at the actual value are based on the methods of property valuation set out in the Guidelines of Valuation of Immovable Property<sup>6</sup> issued by the Income Tax department. These methods would typically involve the

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<sup>6</sup> Valuation Cell, Income Tax Department Ministry Of Finance, Guide Lines For Valuation Of Immovable Properties (2009) <<http://cpwd.gov.in/Publication/GuidelinesProperties2009.pdf>> accessed 20 July 2017

assistance of a property assessor / valuer to derive an accurate value. The methods are as follows, in order of priority:

*(i) Rent capitalization method*

51. In this method, the fair market value of the property / dwelling unit will be determined as per the rent received on the property through the following formula:

Fair market value of dwelling unit = (annual rent on property + interest on security deposit - outgoings on property<sup>\*</sup>)/rent yield<sup>#</sup>

\* Outgoings would include maintenance and repair charges, municipal taxes and insurance premium.

# The rent yield as per a report by the Ambit Capital is 2%<sup>7</sup>, which can be revised every three years.

*(ii) Comparable Method*

In this method, the value of a property with a similar size and age, in a similar locality with a similar use to the debtor's dwelling unit is used as a benchmark to arrive at the fair market value of the debtor's property.

*(iii) Land and building method*

In this method, the value of the land on which the property is constructed is obtained by comparable instances of sale of adjoining or similar land. This is added to the value of the building to arrive at the fair market value of the debtor's property. The fair market value of the building on the valuation date is the cost of reproduction on that date less the depreciation from the date of completion of the building to the date of its valuation.

### 3. Comparison of threshold value with actual value

The threshold value will then be compared to the actual value. For personal ornaments, an assessment of the actual value may be made by a valuer as per an appropriate method. If the threshold value is higher than the actual value, the debtor can retain her dwelling unit or personal ornaments.

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<sup>7</sup> Ambit Capital, Economy Report, (2015)

<[http://reports.ambitcapital.com/reports/Ambit\\_Economy\\_Thematic\\_Maggie,ManmohanandModi\\_30Jul2015.pdf](http://reports.ambitcapital.com/reports/Ambit_Economy_Thematic_Maggie,ManmohanandModi_30Jul2015.pdf)> accessed 20 July 2017



*However, if the actual value is higher than the threshold value, the Working Group felt that outright disposal may not be the best course of treatment for such property as there may be instances where sentimental value is attached to a debtor's dwelling unit or personal ornaments. Taking into account the larger debtor-friendly approach of the individual insolvency resolution process, the Working Group is of the opinion that certain protective measures need to be provided to prevent the permanent loss of such property, and the same should find place in the subordinate legislation. To this end, the Working Group recommended that a three pronged approach be made a part of the draft rules to deal with assets that are above the excluded assets thresholds prescribed –*

Provision 1:

In the event the value of an asset such as a single dwelling house or personal ornaments exceeds the prescribed threshold value, the asset may be taken over and sold, but the debtor will be entitled to an amount equivalent to the prescribed threshold value amount from the proceeds of the sale.

*Illustration:* If the threshold value of the dwelling unit of the debtor is calculated to be INR 25 lakh, and the actual value as assessed by the valuer is INR 40 lakh, in the event the dwelling unit is disposed of under the repayment plan, the debtor shall be entitled to INR 25 lakh from the proceeds of the sale of the dwelling unit.

Provision 2:

The debtor has also been given the right to retain an asset (dwelling unit or personal ornaments) which exceeds the prescribed threshold, in case she is able to provide the non-exempt differential value for the benefit of the creditors.

*Illustration:* If the threshold value of the dwelling unit of the debtor was calculated to be INR 25 lakh, and the the actual value as assessed by the valuer is INR 40 lakh, she should be allowed to retain the house if she provides the differential amount of INR 15 lakh for the benefit of the creditors under the repayment plan.

Provision 3:

The draft rule also recognizes that the Adjudicating Authority may exempt assets even above the prescribed value in case it is required, given the circumstances of an individual case.

*Illustration:* In situations where the debtor or a family member is differently abled, a dwelling unit which has been remodelled exclusively for use by such differently abled member, may be exempted by an Adjudicating Authority, even if its value is above the threshold value prescribed in the rules.

The approaches set out in provision 1 and 2 are prevalent in the bankruptcy law of the United States.

***The Working Group therefore recommends the above provisions be inserted to safeguard the debtor's property and ensure that to the extent possible, personal ornaments or dwelling unit of great value to the debtor and the debtor's family is not parted with during the insolvency resolution process.***

#### ***D. Definition of 'relative' (Rule 13 of the Draft Rules)***

52. The definition of associate as per Section 79(2) includes relatives, and the term relatives means members of a Hindu Undivided Family, and other relationships as may be prescribed. The definition of relatives assumes significance since relatives are included as associates of the debtor, and any creditor who is an associate of the debtor cannot vote in meetings of the creditor as per the Code. Additionally, the eligibility criteria under the draft regulations prohibit an associate from acting as a resolution professional for the insolvency resolution process. It is important to ensure that a broad range of relationships that may influence the insolvency resolution process and its outcome be included in the definition of relatives, so as to distance such relations from affecting the process as a resolution professional or through impacting the voting on the repayment plan.

53. The Working Group decided that it would be most appropriate to take cue from the Explanation to Section 79(2). As per the Explanation, members of a Hindu Undivided Family are deemed to be relatives. Therefore, the Working Group was of the opinion that definition of 'relatives' under the second part of the Explanation which requires being defined, should *broadly* mirror the Class I and Class II heirs as given in the Hindu Succession Act,

without making reference to the statute. *The rule which defines relatives, therefore, aims to cover a majority of relatives of the debtor, and is an inclusive definition, to give flexibility to the Adjudicating Authority to include other forms of relationships which may be legally recognised with the evolution of the society and the law.*

**E. Form of demand notice (Rule 5 of the Draft Rules)**

54. As per Section 95(4)(b) of the Code, a demand notice is required to be served by the creditor upon the debtor, to pay up the defaulted unpaid debt within a period of fourteen days. If the debt is not paid during the said time, or is not disputed, an insolvency resolution process can be triggered by the creditor on the basis of such demand notice. During the course of its deliberations, the Working Group felt that prescribing a set format for such a demand notice may be counter-intuitive, as it may be difficult for creditors in each part of the country to adhere to a specified format. Further, it was observed that a set format often becomes a ground for litigation, and derails the entire process and defeats the purpose of the law. *Thus, the Working Group recommends that the draft rules prescribe only the essential contents of a demand notice, and allow the form of such notice to be flexible. As long as the essential components are mentioned in the demand notice, a notice shall be valid in the eyes of law.*

**F. Resolution Professional's report on the application (Rule 8(1) of the Draft Rules)**

55. In the insolvency resolution process for individuals and firms, the resolution professional is appointed even before the application is admitted by the Adjudicating Authority. The purpose of such appointment is that resolution professional has the responsibility of examining the application and recommending whether it should be accepted or rejected. Such examination has to be captured in the form of a report, which is required to be submitted to the Adjudicating Authority under Section 99 of the Code. The objective of the report is to reduce the time taken by the Adjudicating Authority in examination of the application. The feasibility of prescribing a format for this report was discussed, but the Working Group believed that a set format will prove to be restrictive for different scenarios that may come up in individual insolvency cases. *The Working Group was of the opinion that to obviate any confusion regarding the final recommendation by the resolution professional, instead of prescribing a format for the entire report, mandatory language be*

*prescribed which clearly sets out: (i) the final recommendation of the resolution professional in relation to the application; and (ii) a summary of the reasons for her recommendation.*

#### **G. Application for separate debt (Rule 4(2) and (3) of the Draft Rules).**

56. Though the Code defines partnership debt and the process for filing an application in relation to such debt, it is possible that a partner of a firm may incur debt in the capacity of a partner of a firm, or in her personal capacity, for which the partner alone is liable and not the firm. In such cases, since the partnership firm or its assets may be affected, *the Working Group considered it prudent to clarify that an application for a separate debt can be made by the partner of the firm so liable, without taking consent of the other partners. However, a notice that such an application is being made by the concerned partner should be provided to the other partners of the firm.*

#### **H. Eligibility of resolution professional (Regulation 3 of the Draft Regulations)**

57. The Working Group was of the opinion that for the individual insolvency resolution process, simplified eligibility criteria should be adopted for resolution professionals as compared to the corporate insolvency resolution process. The eligibility criteria under the corporate process debar professional advisors of a corporate debtor such as chartered accountants and auditors and related parties from acting as a resolution professional. Under the individual insolvency resolution process, it was discussed that such professionals may actually be better suited to be the resolution professional of individuals, as they will be well versed with the affairs of the individual. Thus, the restriction is narrowed down to only associates of a debtor from acting as a resolution professional, along with restrictions on resolution professionals who are under a restraint order of the Board etc. It may be noted that the term ‘resolution professional’ used in this paragraph is used in the broader sense, and is not intended to restrict the meaning to only an individual. *Therefore, the Working Group recommends that only associates of the debtor be prohibited from acting as resolution professionals of the debtor under the individual insolvency resolution process.*

#### **I. Cap on members in the committee of creditors (Regulation 7 of the draft regulations)**

58. In insolvency procedures for individuals, the creditors normally play little or no role in the procedure. Even where creditors are invited to participate, creditors' participation in insolvency cases of individuals cannot be taken for granted. Creditors will participate where they view it as being in their best interest to do so, and they will be reluctant to participate where they believe that it will unlikely increase their dividend.

59. The Working Group discussed the composition of the committee of creditors ("CoC") under the individual insolvency resolution process, and in particular the maximum number of creditors in the committee. The CoC is required to vote on the repayment plan, as well as approve specific aspects of the process such as certain insolvency resolution process costs, etc. It was felt that forming a committee and prescribing a maximum number of creditors would facilitate the working of the CoC and allow it function more efficiently. *After deliberations, the Working Group recommends that the number of creditors in the committee should be restricted to a total of twelve members, which includes ten largest creditors by value, along with one representative each of all workmen and employees of the debtor (if any).*

#### ***J. Actions requiring approval of the CoC (Regulation 28(2) of the Draft Regulations)***

60. As per the Code, the CoC is required to approve the repayment plan. The draft regulations also require the approval of the committee of creditors on certain costs such as fees of and expenses incurred by the resolution professional and any finances raised for the process and costs associated with raising such finances.

#### ***K. Participation and voting in the meeting of CoC (Regulation 20 of the Draft Regulations)***

61. With the aim of making the individual insolvency resolution process cost effective, the Working Group deliberated on the possibility of having video conferencing and electronic voting as a mandatory requirement. After deliberations, the Working Group is of the considered view that video conferencing is an expensive process, and may not be feasible in an individual insolvency resolution process setting. However, electronic voting is not an expensive process and may actually be more cost effective in terms of obviating travel costs for creditors. *Therefore, the Working Group decided to include electronic voting as an optional method of voting. As per the draft regulations, the creditors who are not present at*

*the meeting of the committee of creditors or who were present and did not vote, may be provided the option to vote electronically.*

**L. Proxy Voting (Regulation 20 of the Draft Regulations)**

62. The Code provides that creditors may appoint proxies to vote on their behalf on the repayment plan. The draft regulations specify the method of appointing a proxy, and the requirements to be fulfilled to appoint a proxy. *The Working Group is of the opinion that the proxy should not be a creditor or associate of the debtor, to ensure least amount of bias in their vote. Further, a proxy can represent only one creditor, and not a group of creditors, with the exception of a group of employees or workmen. In addition, it was agreed that the proxy should only be allowed to vote on the repayment plan, and not suggest modifications etc.*

**M. Content of the Repayment plan (Regulation 22 of the Draft Regulations)**

63. Repayment plan is the most important aspect of the individual insolvency resolution process. The Code provides that the repayment plan, though initially prepared by the debtor and the resolution professional, is required to be approved by more than three-fourth in value of creditors prescribed in section 111 of the Code. Prior to approval, the creditors can suggest modifications to the repayment plan, and such modifications have to be consented to by the debtor. The aim is that the repayment plan will be the result of negotiations between the creditors and debtor, overseen by the resolution professional, by which they will reach a mutually acceptable payment plan to repay the debts or restructure the business, as the case may be.

64. The Draft Regulations specify the mandatory contents of a repayment plan. *Based upon deliberations of the Working Group, it was decided that the repayment plan should include inter alia: (i) a provision of a minimum budget for the sustenance of debtor and her family for the period of repayment plan, (ii) a provision for any financing to be raised, including the source of such financing and that it will be paid in priority; (iii) provision that excluded assets of debtor identified by the resolution professional shall not be sold or transferred, and provision for the treatment of excluded assets which may be above the prescribed values for excluded assets; (iv) provision for varying terms of onerous contracts or other transactions;*

*and (v) the need for advisory support in the management of affairs or assets of the debtor..*

The entry in (i) is meant to ensure that the debtor is guaranteed a minimum portion of her income even during the repayment plan, which will be decided on the circumstances of each case. The Working Group discussed the possibility of setting out a method to calculate this minimum budget, but it was agreed that it should remain broad to allow flexibility to the resolution professional in determining what this budget should be on a case to case basis, and provide the rationale for it.

**N. *Duties of resolution professional (Regulation 27 of the Draft Regulations)***

65. The duties of the resolution professional in relation to the individual insolvency resolution process have been provided in the draft regulations. These duties include (i) appointing a valuer to assess the property of the debtor, especially for determination of the excluded assets of the debtor; (ii) raising finances for the individual insolvency resolution process; and (iii) preparing the statement of affairs for the debtor.

66. The resolution professional will be especially critical in assessing the excluded assets of the debtor, for the purposes of the repayment plan, in the event the assets of the debtor are being utilised for repayment. Given that the method of assessing threshold value and actual value for an excluded dwelling unit are fairly technical, it would be necessary to appoint a professional valuer to obtain an accurate value.

**Office Memorandum**

**Subject: Constitution of Working Group for recommending the strategy and approach for implementation of the provisions of the Insolvency and Bankruptcy Code, 2016 to deal with insolvency and bankruptcy in respect of (i) Guarantors to Corporate Debtors, and (ii) Individuals having Business, and drafting related Rules and Regulations.**

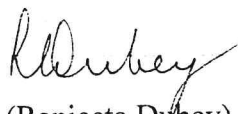
A Working Group is hereby constituted for recommending the strategy and approach for implementation of the provisions of the Insolvency and Bankruptcy Code, 2016 to deal with insolvency and bankruptcy in respect of (i) Guarantors to Corporate Debtors, and (ii) Individuals having Business, and drafting related Rules and Regulations.

2. The Working Group shall comprise as under:

Sl. No.	Name and Designation	Chairperson/Member
1	Mr. Amarjeet Singh Chandiook, President, INSOL India	Chairperson ✓
2	Mr. Sandip Ghose, Director, NISM	Member
3	Ms. Bindu Ananth, Chairperson, IFMR	Member ✓
4	Mr. Sumant Batra, President, SIPI	Member ✓
5	Mr. Jiji Mammen, CEO, MUDRA	Member ✓
6	Mr. Sankar Chakraborti, CEO, SMERA	Member
7	Mr. Anil Bhardwaj, Secretary General, FISME	Member
8	Mr. Mukesh Mohan Gupta, President, CIMSME	Member
9	Mr. Alok Dhir, IRR Insolvency Professionals Private Ltd.	Member
10	Mr. Anil Goel, AAA Insolvency Professionals LLP	Member
11	Ms. Alka Kapoor, CEO, ICSI IPA	Member
12	Mr. J. K. Budhiraja, IPA of ICAI (Cost)	Member
13	Mr. V. Sagar, CEO, IIP of ICAI	Member
14	A Representative of Ministry of Corporate Affairs	Member
15	Ms. Ranjeeta Dubey, DGM, IBBI	Member Secretary

3. The Working Group shall submit its report along with recommendations and draft Rules and Regulations within two months from the date of its constitution.

4. This issues with the approval of the competent authority.

  
(Ranjeeta Dubey)  
Deputy General Manager  
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To,  
The Chairperson and Members of the Working Group  
Private Secretary to Chairperson, IBBI  
Private Secretary to Whole Time Members of IBBI



## ANNEXURE II

### DRAFT MINISTRY OF CORPORATE AFFAIRS NOTIFICATION

New Delhi, the [...] [...], 2017

**G.S.R. [...].**— In exercise of the powers conferred by sub-section (1) and clauses (m), (n) and (o) of sub-section (2) of section 239 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby makes the following Rules, namely-

- 1. Short title and commencement.** — (1) These rules may be called the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Individuals and Firms) Rules, 2017.  
(2) They shall come into force from the [...] day of [...], 2017.
- 2. Application.** —These Rules shall apply to matters relating to the insolvency resolution process for individuals and firms under Part III of the code.
- 3. Definitions.** — (1) In these Rules, unless the context otherwise requires-

(a) “Adjudicating Authority” means-

- (i) the National Company Law Tribunal constituted under the Companies Act, 2013 (18 of 2013) for personal guarantors if Section 60 (2) or 60 (3) is applicable; or
- (ii) the Debt Recovery Tribunal constituted under Section 3(1A) of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) for individuals and firms in all other cases as applicable;

(b) “electronic means” means an authorized and secured computer programme which is capable of producing confirmation of sending communication to the participant entitled to receive such communication at the last electronic mail address provided by such participant and keeping record of such communication;

(c) “insolvency resolution process” means insolvency resolution process for individuals and firms under Part III of the code;

(d) “separate debt” means a debt, including a personal debt, for which a partner of a firm is liable, other than a partnership debt.

(2) Unless the context otherwise requires, words and expressions used and not defined in these Rules, but defined under the code, shall have the meaning assigned to them in the code.

- 4. Application by debtor.** — (1) A debtor shall apply under Section 94(1) in Form 1.
- (2) In case the default is in respect of a separate debt, the person liable for such separate debt shall apply for an insolvency resolution process for himself, personally or through a resolution professional.
- (3) The debtor shall forthwith dispatch a copy of the application filed with the Adjudicating Authority to -
- (a) the last known address of the creditor(s), simultaneously by registered post, speed post and courier and in any case through electronic means at the last known e-mail address;
- (b) the last known address of the of the other partners of the firm simultaneously by registered post, speed post and courier and in any case through electronic means at the last known e-mail address, for an application under sub-rule 2.
- 5. Demand notice by creditor.** — (1) A creditor shall deliver a demand notice to the debtor for the payment of the unpaid debt in default under Section 95(4)(b), which shall contain the following-
- (i) the amount of debt due;
- (ii) the amount of debt in default;
- (iii) the basis for (i) and (ii);
- (iv) a statement that if the debtor does not pay the unpaid debt in default within a period of fourteen days from the receipt of the demand notice, an insolvency resolution process will be initiated; and
- (v) a statement that the right to make an application in respect of the debt is not barred by limitation under the applicable law.
- (2) The demand notice shall be delivered to the debtor at the last known address simultaneously by registered post, speed post and courier and in any case through electronic means at the last known e-mail address.
- (3) If the demand notice under sub-rule (2) is not delivered to the debtor, it shall be affixed at the last known address of the debtor and shall be deemed to be delivered.
- (4) A copy of the demand notice delivered under this section may be filed in an information utility, if any.
- 6. Application by creditor.** — (1) A creditor, either by itself or jointly, shall apply for initiating the insolvency resolution process for an individual or a firm, as the case may be, under Section 95, in Form 2.
- (2) In case the default is in respect of a separate debt, a creditor shall file an application for triggering the insolvency resolution process of the person who is liable for the separate debt.
- (3) The creditor shall forthwith dispatch a copy of the application filed with the Adjudicating Authority to the last known address of the debtor simultaneously by registered post, speed post and courier and in any case through electronic means at the last known e-mail address.

(4) In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.

7. **Copy of application.** — On the appointment of the resolution professional nominated by the Board under Section 97(4) by the Adjudicating Authority, a copy of the application as filed shall be forthwith provided to such resolution professional by the Adjudicating Authority.
8. **Report of the resolution professional.** — (1) A copy of the report prepared by the resolution professional under Section 99 shall be provided by the resolution professional to the applicant on submission to the Adjudicating Authority, and shall include the following declaration-

*I hereby recommend acceptance / rejection of the application for the following reasons:*

*[reasons to be provided in summary]*

(2) The resolution professional may require the applicant to rectify the application prior to the submission of the report under sub-rule (1), which shall be recorded in the report.

(3) For the purposes of preparation of the report under sub-rule (1), the resolution professional may request further information or explanations in connection with the application from relevant government departments or banks or financial institutions, which should be furnished within seven days of the receipt of the request.

(4) In case the information requested is not provided within the stipulated time, the resolution professional may apply to the Adjudicating Authority for appropriate directions.

9. **Excluded assets.** – (1) For the purposes of Section 79(14)(c), unencumbered personal ornaments up to INR [...] of the debtor or his immediate family which cannot be parted with, in accordance with religious usage, shall be excluded assets.

(2) For the purposes of Section 79(14)(e), an unencumbered single dwelling unit owned by the debtor upto the threshold value calculated according to the methodology provided in the Schedule shall be an excluded asset.

(3) In the event the actual value of the excluded asset is greater than the threshold value in sub-rule (1) or (2) –

- (i) the debtor shall be entitled to an amount equivalent to the threshold value, in the event the excluded asset is disposed of; or
- (ii) the debtor may retain the excluded asset on provision of the amount in excess of the threshold value, for the benefit of the creditors.

- (4) The Adjudicating Authority may, depending on the circumstances of each case, exclude assets which may be above the values in sub-rule (1) or (2).

**10. Filing of the application and documents.**— (1) Till such time the rules of procedure for conduct of proceedings under the code are notified, the applications under rule 4 or 6 shall be filed before the National Company Law Tribunal in accordance with rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 issued under Section 469 of the Companies Act, 2013, and before the Debt Recovery Tribunal in accordance with rule 3, 4, 7, 8 and 9 of Debt Recovery Tribunal (Rules), 1993 issued under Section 36 of the Recovery of Debts and Bankruptcy Act, 1993 and Regulation 3, 4, 5 and 11 of the Debt Recovery Tribunal Regulations, 2015 issued under Section 22 of the Recovery of Debts and Bankruptcy Act, 1993, as applicable.

(2) The application, accompanying documents and reports in the insolvency resolution process shall also be filed in electronic form, as and when such facility is made available and as may be prescribed by the Adjudicating Authority.

(3) Till the time the facility mentioned in sub-rule (1) is made available, the applicant may submit the application, accompanying documents and reports in scanned, legible portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the Adjudicating Authority.

**11. Withdrawal of application.** — An application under rule 4 or 6 shall not be withdrawn by the applicant before admission under section 100, without the leave of the Adjudicating Authority.

**12. Application fee.** — (1) An application under rule 4 or 6 filed with the National Company Law Tribunal, shall be accompanied by a fee of INR 1000.

(2) An application under rule 4 or 6 filed with the Debt Recovery Tribunal, shall be accompanied by a fee of INR 100.

(3) The application fee may be paid through any permissible mode of payment.

**13. Definition of relatives.** — For the purposes of Explanation (ii) of Section 79(2)(b), the manner in which a debtor or spouse of debtor is related to a person includes:

- (a) son;
- (b) daughter;
- (c) mother;
- (d) father;
- (e) son's daughter and son;
- (f) daughter's daughter and son;
- (g) grandson's daughter and son;

- (h) granddaughter's daughter and son;
- (i) brother;
- (j) sister;
- (k) brother's son and daughter;
- (l) sister's son and daughter;
- (m) father's father and mother;
- (n) mother's father and mother;
- (o) father's brother and sister; and
- (p) mother's brother and sister.

*Explanation:*

- (i) The relatives mentioned in (a), (b), (c) and (d) shall include relatives other than those included in the definition of immediate family under Section 79(17) of the code.
- (ii) Wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included.

**14. Miscellaneous.**

The information required to be provided by the creditors under Section 103(2) shall be as per Form 2 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017.

**FORM 1**

(See sub-rule (1) of rule 4)

**APPLICATION BY DEBTOR TO INITIATE INSOLVENCY RESOLUTION  
PROCESS.**

*(Under rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority  
for Insolvency Resolution Process for Individuals and Firms) Rules, 2017)*

[Date]

To,

The Adjudicating  
Authority

[Address]

From,

[Name and last known address of the debtor]

In the matter of [name of the debtor]

**Subject:** Application to initiate insolvency resolution process in respect of [name of  
the debtor].

Madam/Sir,

I/ We hereby submit this application to initiate an insolvency resolution process in  
respect of [name of debtor].

The details for the purpose of this application are set out below-

**Part-I**

<b>PARTICULARS OF THE DEBTOR</b>		
1.	Title and full name	
2.	Date of birth and e-mail address	
3.	Any other name by which the debtor is or has been known (as applicable)	
4.	Last known address	

5.	Occupation			
6.	Monthly income			
7.	List of associates of the debtor, including relatives, who may be creditors	Name	Age	Address
8.	Bank account details	Account number	IFSC code	Branch address
9.	Identification numbers	Aadhaar number	Passport number	PAN
10.	Contact number(s)	Home	Mobile	Business
11.	List of assets of debtor and immediate family as on the application date.  Note: This will include all assets of debtor, irrespective of them being excluded assets. Please mention which assets may be excluded assets.	Immovable	Description	Estimated value
		Movable	Description	Estimated value
		Vehicles		
		Shares in listed companies		
		Shares in other companies		
		Life insurance policy		
		Jewelry		
		Pension policy		
		Investment in mutual funds		

		Investment in other funds		
		Investment in partnerships and other business concerns,		
		Any other movable property		
12.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other)			
13.	In case of a firm			
(i)	Firm name			
(ii)	Business address			
(iii)	Registration number and date of registration (if applicable)			
(iv)	Nature of business			
(v)	List of assets of the firm in the format in number 10.			
	Details of each partner of firm:			
(vi)	Details mentioned in serial number 1-11 of this part			
(vii)	Date of joining firm			
(viii)	Capital subscription as per latest balance sheet			
(ix)	Profit sharing as per latest balance sheet			



(x)	Name, address and authority of person submitting application on behalf of the firm	
14.	In case of a personal guarantor-	
	Name of corporate debtor for which guarantee is given	
	Any current or past position held in the corporate debtor	
	Identification number	
	Whether corporate debtor is an associate	
15.	Name and address of person resident in India authorised to accept the service of process on debtor's behalf	

### Part – II

Please complete this Part if you have been self-employed, or a partner in a firm.  
If not, go to Part III.

<b>BUSINESS PARTICULARS OF DEBTOR</b>		
1.	Name of business and form of business	
2.	Details of any registration	
3.	Description of business	
4.	Business address	
5.	Monthly income of debtor	

5.	If business organization is a firm, details mentioned in serial no. 12 (v) – (x) in Part I of this form.	
6.	Commencement date of business and date of close of operations (if applicable)	
7.	Address where books of accounts / accounting records are kept (including soft copy records)	
8.	Whether employees to whom debt owed (state yes or no, and if yes, details to be mentioned in Part III)	

**Part - III**

<b>PARTICULARS OF DEBT [CREDITOR WISE, AS APPLICABLE]</b>		
1.	Name(s) of creditor(s)	
2.	Last known address	
3.	Total outstanding debt (including any interest or penalties)	
4.	Amount of debt in default	
5.	Reason for the default in payment of debt	
6.	Date when the debt was due	
7.	Date when the default occurred	

8.	Nature of the debt	
9.	Secured debt including particulars of security held, the date of its creation, estimated value of security as per the creditor	
10.	Unsecured debt	
11.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers	
12.	Record of default with the information utility, if any	
13.	List of documents attached to this application in order to prove the existence of debt and the amount in default	
14.	Statement by debtor in respect of excluded debts	<p>I [<i>debtor</i>] hereby state that the debt(s) for which the insolvency resolution process application is filed does not include any-</p> <ul style="list-style-type: none"> <li>(i) liability to pay fine imposed by a court or tribunal;</li> <li>(ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;</li> <li>(iii) liability to pay maintenance to any person under any law for the time being in force;</li> <li>(iv) liability in relation to a student loan.</li> </ul>
15.	Statement by debtor regarding limitation	I [ <i>debtor</i> ] hereby state that the right to make this application is not barred by limitation as per the applicable law.

**Part - IV**

<b>PARTICULARS OF &amp; DECLARATIONS BY RESOLUTION PROFESSIONAL THROUGH WHOM APPLICATION FILED</b>			
1.	Title and full name		
2.	In case associated with an Insolvency Professional Entity (IPE), details of the IPE and nature of association.		
3.	Last known address		
4.	E-mail address(es)		
5.	Contact number	Home	Mobile
		Business	

6.	Declaration by resolution professional	<p>I, [<i>name of insolvency professional</i>], an insolvency professional registered with [<i>name of insolvency professional agency</i>] having registration number [<i>registration number</i>] have been proposed as the resolution professional by [<i>name of applicant debtor</i>] in connection with the proposed insolvency resolution process of [<i>name of the debtor</i>].</p> <p>I hereby:</p> <ul style="list-style-type: none"> <li>(i) agree to accept appointment as the resolution professional if an order of appointment is passed by the Adjudicating Authority;</li> <li>(ii) state that the registration number allotted to me by the Board is [<i>insert registration number</i>] and that I am currently qualified to practice as an insolvency professional;</li> <li>(iii) disclose that I am currently serving as an insolvency professional / resolution professional / liquidator/ bankruptcy trustee in [<i>insert number and details of the proceedings</i>];</li> <li>(iv) certify that there are no disciplinary proceedings pending against me with the Board or [<i>name of the insolvency professional agency he is a member of</i>];</li> <li>(v) affirm that I am eligible to be appointed as a resolution professional in respect of the debtor in accordance with Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017.</li> <li>(vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 [<i>insert disclosures, if any</i>].</li> </ul>
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[Name of the debtor] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

Signature of debtor / authorized person
Name in block letters
Position with or in relation to the debtor
Address of person signing

**ATTACHMENTS: List of documents to be appended to the application:**

1. All documents mentioned in serial number 13 of Part III of this form.
2. Copy of the income tax returns with detailed computation of the income of the debtor, or the firm, as the case may be, for the previous three years.
3. Copy of the partnership deed, if applicable.
4. Copy of the personal guarantee contract, if applicable.
5. Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891)
6. The latest and complete copy of the financial contract reflecting all amendments and waivers to date.
7. Relevant ownership and title documents for all assets.
8. Copy of the authorization, wherever required under this form.
9. Proof that the application fee has been paid.
10. Documentary evidence of all information sought in each entry for each part of the form.
11. A statement of affairs of the debtor made up to a date not earlier than seven days from the date of the application including the following information and supporting documents, namely-
  - (i) debtor's assets (inclusive of assets which may be excluded assets) and liabilities for the previous three years;
  - (ii) secured and unsecured debts (inclusive of excluded debts mentioned in serial number 14 of Part III of the form) with names of the creditors, and all requisite details for the previous three years;

- (iii) particulars of debt owed by debtor to associates of the debtor for the previous three years;
- (iv) guarantees given in relation to any of the debts of the debtor, and if any of the guarantors is an associate of the debtor;
- (v) financial statements with all annexures and schedules for the business owned by the debtor, or of the firm in which the debtor is a partner, as the case may be, for the previous three years, if applicable;
- (vi) if debtor is a member of a HUF, financial statements of the business operations of the HUF;
- (vii) wealth tax statements filed by the debtor, if any, for the previous five years.

Note: For a firm, the statement of affairs for the firm, and of each individual partner should be prepared separately, for attachment herewith.

**FORM 2**

(See sub-rule (1) of rule 6)

**APPLICATION BY CREDITOR TO INITIATE INSOLVENCY RESOLUTION  
PROCESS**

*(Under rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority  
for Insolvency Resolution Process for Individuals and Firms) Rules, 2017)*

[Date]

.....

To,

The  
Adjudicating  
Authority  
[Address]

From,

[Name and last known address of the  
creditor]

In the matter of [name of the debtor]

Subject: Application to initiate insolvency resolution process in respect of [name  
of the debtor] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Name of the creditor], hereby submits this application to initiate an insolvency  
resolution process in the case of [name of debtor].

The details for the purpose of this application are set out below:

**Part - I**

<b>PARTICULARS OF APPLICANT</b>				
1.	Title and full name			
2.	Date of birth and e-mail address			
3.	Contact number(s)	Home	Mobile	Business



4.	Identification number of creditor	Aadhaar number	CIN	PAN
5.	Last known address			

**Part – II**

<b>PARTICULARS OF THE DEBTOR</b>				
1.	Title and full name			
2.	Date of birth and e-mail address (to the extent known)			
3.	Any other name by which the debtor is or has been known (as applicable) (to the extent known)			
4.	Last known address			
4.	Occupation			
5.	Monthly income (to the extent known)			
6.	List of associates of the debtor, including relatives, who may be creditors (to the extent known)	Name	Age	Address
7.	Bank account details	Account number	IFSC code	Branch address
8.	Identification numbers	Aadhaar number	Passport number	PAN
9.	Contact number(s)	Home	Mobile	Business

10.	List of assets of debtor as on the application date (to the extent known)  Note: this will include all assets of debtor, irrespective of them being excluded assets.	Immovable	Description	Estimated value
		Movable	Description	Estimated value
		Vehicles		
		Shares in listed companies		
		Shares in other companies		
		Life insurance policy		
		Jewelry		
		Pension policy		
		Investment in mutual funds		
		Investment in other funds		
		Investment in partnerships and other business concerns,		
		Any other movable property		

11.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other) (to the extent known)	
12.	In case of a firm	
(i)	Firm name	
(ii)	Business address	
(iii)	Registration number and date of registration (if applicable) (to the extent known)	
(iv)	Nature of business	
(v)	List of assets of the firm in the format in serial number 10. (to the extent known)	
	Details of each partner of firm:	
(vi)	Details mentioned in serial number 1-11 of this part (to the extent known)	
(vii)	Date of joining firm (to the extent known)	
(viii)	Capital subscription as per latest balance sheet (to the extent known)	
(ix)	Profit sharing as per latest balance sheet (to the extent known)	
(x)	Name, address and authority of person submitting application on behalf of the firm	
13.	In case of a personal guarantor-	
	Name of corporate debtor for which guarantee is given	

	Any current or past position held in the corporate debtor (to the extent known)	
	Identification number	
	Whether corporate debtor is an associate (to the extent known)	
14.	Name and address of person resident in India authorised to accept the service of process on debtor's behalf	

**Part-III**

<b>PARTICULARS OF DEBT</b>		
1.	Total debt (including any interest or penalties)	
2.	Amount in default	
3.	Date on which debt was due	
4.	Date on which default occurred	
5.	Nature of the debt	
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)	
7.	Unsecured debt (as applicable)	
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	
9.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	
10.	Record of default with the information utility, if any (attach a copy)	

11.	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	
12.	Provision of law, contract or other document under which debt has become due (attach a copy)	
13.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the debtor (attach a copy)	
14.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	

**Part-IV**

<b>PARTICULARS OF &amp; DECLARATIONS BY RESOLUTION PROFESSIONAL THROUGH WHOM APPLICATION FILED</b>			
1.	Title and full name		
2.	In case associated with an Insolvency Professional Entity (IPE), details of the IPE and nature of association.		
3.	Last known address		
4.	E-mail address(es)		
5.	Contact number	Home	Mobile Business

6.	Declaration by resolution professional	<p>I, [<i>name of insolvency professional</i>], an insolvency professional registered with [<i>name of insolvency professional agency</i>] having registration number [<i>registration number</i>] have been proposed as the resolution professional by [<i>name of applicant debtor</i>] in connection with the proposed insolvency resolution process of [<i>name of the debtor</i>].</p> <p>I hereby:</p> <ul style="list-style-type: none"> <li>(vii) agree to accept appointment as the resolution professional if an order of appointment is passed by the Adjudicating Authority;</li> <li>(viii) state that the registration number allotted to me by the Board is [<i>insert registration number</i>] and that I am currently qualified to practice as an insolvency professional;</li> <li>(ix) disclose that I am currently serving as an insolvency professional / resolution professional / liquidator/ bankruptcy trustee in [<i>insert number and details of the proceedings</i>];</li> <li>(x) certify that there are no disciplinary proceedings pending against me with the Board or [<i>name of the insolvency professional agency he is a member of</i>];</li> <li>(xi) affirm that I am eligible to be appointed as a resolution professional in respect of the debtor in accordance with Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017;</li> <li>(xii) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 [<i>insert disclosures, if any</i>].</li> </ul> <p>(Signature of the insolvency professional)</p>		

[*Name of the creditor*] has paid the requisite fee for this application through [*state means of payment*] on [*date*].

Yours sincerely,

Signature of person authorised to act on behalf of the creditor
Name in block letters
Position with or in relation to the creditor
Address of person signing



**List of documents to be attached to the application:**

1. All documents mentioned in serial number 14 of Part III of this form.
2. Copy of the demand notice served on the debtor in Form 2.
3. Copy of the income tax returns with detailed computation of the income of the debtor, or the firm, as the case may be, for the previous three years, if available.
4. Copy of the personal guarantee contract, if applicable.
5. Copy of the authorization, wherever required under this form.
6. Proof that the application fee has been paid.
7. Documents evidencing the debt and the default in relation to the debt, as may have been provided by the debtor at any point in time, if available.
8. Documents evidencing the assets, liabilities, income and any other relevant information as may have been provided by the debtor at any point in time, if available.
9. Documentary evidence of all information sought in each entry for each part of the form.

## SCHEDULE

### METHODOLOGY FOR CALCULATING THE THRESHOLD AND ACTUAL VALUE OF AN UNENCUMBERED SINGLE DWELLING UNIT

*(Under Rule 9(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Individuals and Firms) Rules, 2017)*

#### 1. Calculation of threshold value of a dwelling unit

Threshold value of dwelling unit = Adjusted threshold area of dwelling unit (as per Table A) × circle rate of the lowest residential category of that zone notified by the relevant authority, adjusted by the quarterly All India House Price Index released by the Reserve Bank of India

*Explanation:*

(a) Table A: Adjusted threshold area of dwelling unit

#### Rural

Number of persons in dwelling unit	Adjusted threshold area of dwelling unit (in square feet)
1	300
2	300
3	300
4	300
5	375
6	450
7	525

8	600
9	675
10	750
>10	750

### **Urban**

Number of persons in dwelling unit	Adjusted threshold area of dwelling unit (in square feet)
1	400
2	400
3	400
4	400
5	475
6	550
7	625
8	700
9	775
10	850
11	925
12+	1000

### **2. Calculation of actual value of a dwelling unit**

(1) The following methods in the given order of priority shall be followed for the calculation of the actual value of the dwelling unit –

- (i) Rent capitalisation method;
- (ii) Comparable method;
- (iii) Land and building method.

(2) Rent capitalisation method

Fair market value of the dwelling unit = (Annual rent + interest on security deposit – outgoings)/Rent yield

*Explanation:*

- (a) For the purpose of determining the annual rent of the dwelling unit, the following shall be taken into account, in the order of priority-
  - (i) Comparable rent of an asset of the same size in the same building;
  - (ii) Comparable rent of an asset of the same size in the adjacent building;
  - (iii) Comparable rent of an asset of the same size in the neighborhood or locality;
  - (iv) Rents fixed by the rent control boards of the respective states.
- (b) The interest on security deposit shall be calculated for a period of 3 months @ 1 year government securities rates on the amount of the security deposit.
- (c) The outgoings from the property shall be an aggregate of the following -
  - (i) Municipal taxes;
  - (ii) Repairs and maintenance charges; and
  - (iii) Insurance premium.
- (d) Rent yield is fixed at 2% and shall be subject to revision every three years.

(3) Comparable Method

The fair market value of the dwelling unit shall be calculated taking into account a unit similar to the dwelling unit in the following respects -

- (i) Size;
- (ii) Locality;
- (iii) Age; and
- (iv) Use.

(4) Land and building method

Fair market value of the dwelling unit = Value of the land (A) + Value of the building i.e. the dwelling unit (E)

*Explanation-*

- (a) Value of the land (A) shall be calculated in the following order of priority -
  - (i) Sale value of the adjacent land;
  - (ii) Sale value of the land in the same locality;
  - (iii) Sale value of the land in the neighborhood or adjoining localities;
  - (iv) Guideline/circle rates issued by local authorities for land & construction.
- (a) Value of the Building (E) shall be calculated in the following manner –

Reproduction cost based on plinth area rate issued by state PWDs (B)

Amount of depreciation	(C)
Builders' effort @3% of (B)	(D)
Value of building (B-C+D)	(E)

(c) Amount of Depreciation = (Cost of reconstruction - salvage value)/Estimated useful life of the building

For the purposes of (c), the salvage value is as follows -

- (i) Up to 3 Year Old Building: 80%
- (ii) 3 – 5 Year Old Building: 50%
- (iii) 5 – 10 Year Old Building: 25%
- (iv) 10 Years or older buildings: 10%

## **ANNEXURE III**

### **INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR INDIVIDUALS AND FIRMS) REGULATIONS, 2017**

IBBI/2017-18/GN/[●]. - In exercise of the powers conferred under sub-section (1)(t) of Section 196, sub-section (1) and clause (zn), (zo), (zp) and (zq) of sub-section (2) of section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following Regulations, namely -

#### **CHAPTER I**

#### **PRELIMINARY**

##### **1. Short title and commencement.**

- (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017.
- (2) These Regulations shall come into force on [●] 2017.
- (3) These Regulations shall apply to the insolvency resolution process.

##### **2. Definitions.**

- (1) In these Regulations, unless the context otherwise requires-
  - (a) “Adjudicating Authority” means-
    - (i) the National Company Law Tribunal constituted under the Companies Act, 2013 (18 of 2013) for personal guarantors if Section 60 (2) or 60 (3) is applicable; or
    - (ii) the Debt Recovery Tribunal constituted under Section 3(1A) of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) for individuals and firms in all other cases as applicable.
  - (b) “committee of creditors” means the committee of creditors constituted by the resolution professional under Regulation 6;
  - (c) “electronic form” shall have the meaning assigned to it in section 2(r) of the Information Technology Act, 2000 (21 of 2000);
  - (d) “electronic means” means an authorized and secured computer programme which is capable of producing confirmation of sending communication to the participant entitled to receive such communication at the last electronic mail address provided by such participant, and keeping record of such communication;

- (e) “participant” means a person entitled to attend a meeting of the creditors and includes the committee of creditors, the debtor, the resolution professional and any other person authorised by the committee to attend such meeting;
  - (f) “insolvency resolution process” means the insolvency resolution process for individuals and firms under Chapter III of Part III of the code;
  - (g) “insolvency resolution process costs” means the costs specified in Regulation 28;
  - (h) “insolvency resolution process period” means the period beginning from the date of the order passed under Section 100, until one hundred and eighty days, or the date of the order passed under section 114, whichever is earlier;
  - (i) “insolvency commencement date” means the date of admission of an application by the Adjudicating Authority for initiating the insolvency resolution process under Chapter III of Part III of the code.
- (2) Unless the context otherwise requires, words and expressions used and not defined in these Regulations, but defined in the code, shall have the meaning assigned to them in the code.

## **CHAPTER II**

### **GENERAL**

#### **3. Eligibility for resolution professional.**

- (1) An insolvency professional shall be eligible to be appointed as a resolution professional for an insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is a partner or director, or the insolvency professional entity of which he is a partner or director, are not associates of the debtor.
- (2) An insolvency professional shall not be eligible to be appointed as a resolution professional if he, or the insolvency professional entity of which he is a partner or director, is under a restraint order of the Board.
- (3) An insolvency professional shall not continue as a resolution professional if the insolvency professional entity of which he is a director or a partner, or any other partner or director of such insolvency professional entity represents any other stakeholder in the same insolvency resolution process.

#### **4. Debt counselling.**

Debt counselling may be provided to the debtor prior to the commencement of the insolvency resolution process and thereafter by such entities as may be recognised by the Board or the Central Government in this respect.

### **CHAPTER III**

#### **PROOF OF CLAIMS OF CREDITORS**

##### **5. Submission of proof of claim**

- (1) A creditor shall submit a claim and proof of such claim to the resolution professional on or before the last date mentioned in the public announcement, in Form 1.
- (2) Form 1 shall be submitted by the creditor through electronic means or by registered post or speed post or courier.
- (3) A creditor who fails to submit proof of claim as per sub-regulation (1) within the time stipulated in the public announcement, may submit such proof to the resolution professional till the approval of a repayment plan by the creditors.
- (4) A creditor who submits proof of claim under sub-regulation (3) shall be entitled to participate in the meetings of the committee of creditors, if such creditor is included in the committee as per Regulation 7.
- (5) The inclusion of a creditor under sub-regulation (4) shall not affect the validity of any decision taken in any meeting of the committee of creditors prior to such inclusion.
- (6) The creditor shall bear the costs relating to the proof of claim.

##### **6. Verification of claims**

- (1) The resolution professional shall commence the verification of each claim as soon as it is received, and prepare a list of creditors reflecting the name of the creditors, amount claimed, amount admitted, and security interest in respect of the claims, if any, within the time period stipulated in Section 104 (2).
- (2) The resolution professional shall file a report certifying the constitution of a committee of creditors on the preparation of the list of creditors, to the Adjudicating Authority under sub-regulation (1).
- (3) The list of creditors constituting the committee filed with the Adjudicating Authority under sub-regulation (2) shall be-
  - (a) available for inspection by the persons who submitted proofs of claim;



- (b) available for inspection by partners and guarantors of the debtor;
- (c) displayed on the website, if any, of the debtor;
- (d) presented at the first meeting of the committee of creditors.

## **7. Committee of creditors**

- (1) A committee of creditors formed under Regulation 6(2) shall consist of the following members:
  - (a) ten largest creditors by value;
  - (b) one representative elected by all workmen other than those workmen included in sub-clause (a), if applicable; and
  - (c) one representative elected by all employees other than those employees included in sub-clause (a), if applicable.
- (2) In the event the number of creditors is less than ten, the committee shall include all such creditors.

## **8. Determination of amount of claim.**

- (1) Where the amount claimed by a creditor is not precise due to any reason, the resolution professional shall make the best estimate of the amount of the claim based on the information available with him.
- (2) The resolution professional shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

## **9. Preparation of statement of affairs**

- (1) A statement of affairs of the debtor shall be prepared by the resolution professional for the purposes of section 107(3).
- (2) In case of a firm, the resolution professional shall prepare separate statement of affairs for the firm, and for each partner of the firm respectively.
- (3) A statement of affairs shall include the following information -
  - (a) debtor's assets and liabilities for the previous three years;
  - (b) details of the excluded assets and excluded debts of the debtor;
  - (c) secured and unsecured debts with names of the creditors, and all requisite details for the previous three years;
  - (d) particulars of debt owed by debtor to associates of the debtor for the previous three years;

- (e) guarantees given in relation to any of the debts of the debtor, and whether any of the guarantors is an associate of the debtor;
- (f) Details of the financial statements for the business owned by the debtor, or of the firm in which the debtor is a partner, as the case may be, for the previous three years, if applicable;
- (g) Details of the wealth tax statements filed by the debtor, if any, for the previous five years.

#### **10. Debts in foreign currency**

The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the insolvency commencement date.

*Explanation* - “official exchange rate” is the reference rate published by the Reserve Bank of India or derived from such reference rates.

### **CHAPTER IV**

#### **MEETINGS OF CREDITORS**

#### **11. Meetings of the committee of creditors**

- (1) A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting on a request by thirty-three percent in number of creditors.
- (2) A meeting of the committee other than the meeting as specified in Regulation 12(1) shall be called by giving not less than seven days’ notice in writing to every participant.
- (3) The notice under sub-regulation (2) shall be served on the participant at the address it has provided to the resolution professional, by hand or registered post or courier or speed post, but in any event, be served by electronic means in accordance with Regulation 13.
- (4) Any decision other than for approval or modification of the repayment plan shall require approval of more than fifty percent in value of the creditors present and voting.
- (5) A notice under this Regulation shall comply with the requirements under Regulation 15.

#### **12. First meeting of the creditors.**

- (1) The meeting of the committee of creditors referred to in Section 106 shall not be held any time prior to fourteen days or later than twenty-eight days, from the date of submission of the report by the resolution professional under section 106(1).
- (2) The meeting of the committee shall be called by giving not less than fourteen days' notice in writing to every participant, and shall be accompanied by the documents as mentioned in section 107(3).
- (3) The notice under sub-regulation (3) shall be served on the creditor at the address it has provided to the resolution professional by hand or registered post or courier or speed post but in any event, be served by electronic means in accordance with Regulation 13.
- (4) A notice under this Regulation shall comply with the requirements under Regulation 15.

### **13. Service of notice by electronic means.**

- (1) A notice by electronic means may be sent to the participants through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator (URL) for accessing such notice.
- (2) The subject line in the e-mail shall state the name of the debtor, the place, the time and the date on which the meeting is scheduled.
- (3) If notice is sent in the form of a non-editable attachment to an e-mail, such attachment shall be in the Portable Document Format (PDF) or in a non-editable format together with a 'link or instructions' for the recipient for downloading the relevant version of the software.
- (4) When the notice or notifications of availability of notice are sent by an e-mail, the resolution professional shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent, and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained as "proof of sending".
- (5) The obligation of the resolution professional shall be satisfied when he transmits the e-mail, and he shall not be held responsible for a failure in transmission beyond his control.
- (6) The notice made available on the electronic link or Uniform Resource Locator shall be readable, and the recipient should be able to obtain and retain copies and the resolution professional shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.

#### **14. Service of notice on firm**

Any application or notice in non-electronic form shall be deemed to be duly served on all partners of the firm, if it is served at the place of business of the firm in India and upon any one of the partners of the firm or upon any person having at the time of service the control or management of the firm business.

#### **15. Contents of the notice for a meeting.**

- (1) The notice shall inform the participants of the venue, the time, date and agenda of the meeting.
- (2) The notice of the meeting shall provide that a creditor may attend and vote in the meeting either in person or through a proxy in accordance with Regulation 21.
- (3) If an option to participate through electronic voting is made available to the creditors, the notice of the meeting shall -
  - (a) state the process and the manner for voting and the time schedule, including the time period during which the votes may be cast:
  - (b) provide the login ID and the details of a facility for generating password and for keeping security and casting of an electronic vote in a secure manner; and
  - (c) provide contact details of the person who will address the queries connected with the voting.

#### **16. Quorum**

- (1) A meeting of the committee shall be quorate if creditors representing thirty three percent in number are present in person or by proxy.
- (2) The quorum requirement may be modified by the resolution professional in consultation with the creditors, for any future meetings of the committee.
- (3) Where a meeting of the committee could not be held for want of quorum, unless the creditors have previously decided otherwise, the meeting shall automatically stand adjourned to the same time and place on the next day.
- (4) In the event a meeting of the committee is adjourned in accordance with sub-regulation (3), the adjourned meeting shall be quorate with the creditors attending the meeting.

## **17. Conduct of meeting.**

- (1) The resolution professional shall act as the chairperson of the meeting of the committee.
- (2) At the commencement of a meeting, the resolution professional shall take a roll call, when every participant, including those attending through proxy shall state, for the record, the following -
  - (a) his name;
  - (b) whether he is attending in the capacity of a proxy;
  - (c) whether he is representing a creditor or group of creditors; and
  - (d) that he has received the agenda and all the relevant material for the meeting;
- (3) After the roll call, the resolution professional shall inform the participants of the names of all persons who are present for the meeting and confirm if the required quorum is complete.
- (4) The resolution professional shall ensure that the required quorum is present throughout the meeting.
- (5) From the commencement of the meeting till its conclusion, no person other than the participants and any other person whose presence is required by the resolution professional shall be allowed access to the place where meeting is held without the permission of the resolution professional.
- (6) The resolution professional shall ensure that minutes are made in relation to each meeting of the committee and such minutes disclose the particulars of the participants who attended the meeting by proxy.
- (7) The resolution professional shall circulate the minutes of the meeting to all creditors in the committee and debtor by electronic means within forty-eight hours of the said meeting.

## **18. Transfer of debt due to creditors.**

- (1) In the event a creditor assigns or transfers the debt due to such creditor to any other person during the insolvency resolution process period, both parties shall provide the resolution professional, the terms of such assignment or transfer and the identity of the assignee or transferee.
- (2) The resolution professional shall notify each participant and the Adjudicating Authority of any resultant change in the committee within two days of such change.

**CHAPTER V**  
**VOTING BY CREDITORS**

**19. Calculation of voting share**

- (1) A member of the committee under Regulation 7(1) shall having voting share in proportion of the debt due to such creditor or debt represented by a representative, as the case may be, to the total debt.
- (2) The debt due to any creditor shall be calculated as on the insolvency commencement date, on the basis of the claims admitted.
- (3) For the purposes of Section 109(3), an unliquidated debt shall mean a debt to which a value cannot be assigned by the resolution professional.

Explanation: For the purposes of sub-regulation (1), total debt is the sum of –

- (a) the amount of debt due to the creditors listed in Regulation 7(1)(a);
- (b) the amount of the aggregate debt due to workmen under Regulation 7(1)(b), if applicable; and
- (c) the amount of aggregate debt due to employees under Regulation 7(1)(c), if applicable.

**20. Voting by the committee**

- (1) The resolution **professional** shall, at the meeting, take a vote of the committee of creditors who are participating in the meeting on any item listed for voting, after discussion on the same.
- (2) The resolution professional may provide each member of the committee the means to exercise its vote by either electronic means or through electronic voting system in accordance with the provisions of this Regulation.
- (3) The resolution professional shall-
  - (a) circulate the minutes of the meeting by electronic means to all participants of the meeting within forty-eight hours of the conclusion of the meeting; and

- (b) seek a vote on the matters listed for voting in the meeting from the members of the committee who did not participate in the meeting or did not vote at the meeting, which may be by electronic means or an electronic voting system where the voting shall be kept open a minimum of twenty-four hours from the circulation of the minutes.
- (4) At the end of the voting period, the voting portal shall forthwith be blocked.
- (5) Once a vote on a resolution is cast by a creditor, such creditor shall not be allowed to change it subsequently.
- (6) The resolution professional shall circulate the decision of the creditors on the agenda items along with the names of the creditors who voted for or against the decision, or abstained from voting.
- (7) The circulation under sub-regulation (6) shall be made by electronic means within twenty-four hours of the conclusion of the voting, or forty-eight hours of the conclusion of the meeting if no electronic voting is done.

Explanation- For the purposes of these Regulations-

- (a) the expressions “voting by electronic means” or “electronic voting system” means a “secured system” based process of display of electronic ballots, recording of votes of the members of the creditors and the number of votes polled in favour or against, such that the voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security;
- (b) the expression “secured system” means computer hardware, software, and procedure that –
  - (i) are reasonably secure from unauthorized access and misuse;
  - (ii) provide a reasonable level of reliability and correct operation;
  - (iii) are reasonably suited to perform the intended functions; and
  - (iv) adhere to generally accepted security procedures.

## **21. Voting by proxy**

- (1) A creditor who is entitled to vote at a meeting of the committee shall be entitled to appoint a person as a proxy to attend and vote on his behalf, who shall not be a creditor or associate of the debtor.
- (2) The appointment of a proxy shall be in Form 2.

- (3) The form for appointment of proxy shall be completed and delivered by the creditor to the resolution professional forty-eight hours prior to the meeting of the committee.
- (4) The proxy shall only be entitled to vote on any resolution on behalf of a creditor.
- (5) A proxy may vote electronically on behalf of a creditor by following the procedure set out in Regulation 20 above, provided that the form appointing a proxy has been delivered to the resolution professional as per sub-regulation (3).
- (6) A proxy shall represent more than one creditor only in cases where the proxy is appointed on behalf of employees or workmen in the committee as per Regulation 7(1)(b) or 7(1)(c).

## **CHAPTER VI**

### **REPAYMENT PLAN**

#### **22. Contents of repayment plan**

- (1) The matters under Section 105(3)(c) that shall be provided for in a repayment plan include the following -
  - (a) the duration of the repayment plan;
  - (b) implementation schedule for the repayment plan, including the proposed dates of distributions to creditors, with estimates of their amounts;
  - (c) source of funds for the insolvency resolution process costs and their payment in priority to all other payments under the repayment plan;
  - (d) a minimum budget for the survival of the debtor and immediate family for the duration of the repayment plan;
  - (e) if the debtor has any business, the manner in which it is proposed to be conducted during the course of the repayment plan, and the role of the resolution professional;
  - (f) the manner in which funds held for the purposes of the repayment plan are to be banked, invested or otherwise dealt with, pending distribution to creditors;
  - (g) a comprehensive list of all the creditors of the debtor;
  - (h) the functions which are undertaken by the resolution professional, including supervision and implementation of the repayment plan;
  - (i) variation of the terms of a contract or transaction involving the debtor;
  - (j) that excluded assets will not be transferred or sold;
  - (k) financing required for the insolvency resolution process; and



- (1) terms and conditions for the discharge of the debtor
- (2) A repayment plan may provide for the following-
  - (a) transfer or sale of all or part of the assets of the debtor, including treatment of excluded assets whose actual value exceeds the prescribed threshold value for excluded assets;
  - (b) administration or disposal of any funds of the debtor;
  - (c) satisfaction or modification of any security interest;
  - (d) reduction in the amount payable to creditors;
  - (e) curing or waiving of any breach of a debt due from the debtor;
  - (f) modification in the terms of payment of any debt due from the debtor;
  - (g) amendment of the partnership deed, if applicable;
  - (h) part of the income of the debtor to be used in the repayment of the debt, and the manner of calculating the income of the debtor;
  - (i) ratification of insolvency resolution costs which do not require approval of the committee of creditors under Regulation 28;
  - (j) the manner in which funds held for the purpose of payment to creditors, and not so paid on the end of the repayment plan, are to be dealt with; and
  - (k) such other matters as may be required by the committee of creditors.

### **23. Non-cooperation by debtor**

In the event the debtor does not co-operate post the first meeting under Regulation 12, the resolution professional shall include a statement to this effect in the report prepared under section 112(1).

### **24. Procedure following breach of repayment plan by debtor**

- (1) If in the opinion of the resolution professional, the debtor is in breach of the repayment plan and such breach has not been rectified, the resolution professional shall, as soon as practicable, issue a notice to the debtor identifying the breach and requiring the debtor within fifteen days of the date of notice to:
  - (a) rectify the breach if it is capable of being rectified, and
  - (b) if the resolution professional thinks necessary, provide an explanation of the breach.
- (2) If, within the period specified by the resolution professional in the notice of breach under sub-regulation (1), the debtor:

(a) rectifies the breach of the repayment plan; or

(b) if required, provides an explanation for the breach;

no further action shall be taken against the debtor, and the breach shall be reported to the creditors by the resolution professional within a reasonable time from the date of the breach.

(3) If the breach is not rectified by the debtor in the time period specified in the notice of breach under sub-regulation (1) and the resolution professional is of the opinion that such breach will affect the completion of the repayment plan, he may file a report to the Adjudicating Authority in relation to the premature end of the repayment plan as per section 118(2).

## **25. Filing with the Adjudicating Authority**

(1) The repayment plan as approved by the requisite majority of the creditors, along with the report mentioned in Section 113 shall be filed with the Adjudicating Authority on or before one hundred and twenty days from the insolvency commencement date.

(2) The information mentioned in sub-regulation (1) shall be provided to the debtor and the committee of creditors, on submission to the Adjudicating Authority.

## **26. Completion of the repayment plan**

(1) A repayment plan shall be complete when, in the opinion of the resolution professional, the debtor has complied with all obligations under the repayment plan within the duration of the repayment plan, and a notice to that effect has been issued under section 117(1)(a).

(2) The resolution professional may issue a notice of completion under section 117(1)(a) if the debtor has substantially complied with all obligations under the repayment plan.

(3) The Adjudicating Authority shall consider the notice and the report under section 117(1) in passing the discharge order.

## **CHAPTER VII**

### **RESOLUTION PROFESSIONAL**

## **27. Duties of resolution professional**

The resolution professional shall perform the following duties, namely -

(a) assist the debtor in preparing the repayment plan;

- (b) collect information relating to the assets and finances of the debtor, in order to determine the financial position of the debtor, and prepare his statement of affairs;
- (c) receive and collate all claims submitted by creditors to him, pursuant to the public announcement made under section 102;
- (d) constitute a committee of creditors;
- (e) file information collected with the information utility, if necessary;
- (f) submit the reports as required under the insolvency resolution process;
- (g) appoint a valuer for the valuation of the assets of the debtor, if required;
- (h) raise finances for the insolvency resolution process, if necessary; and
- (i) conduct meetings of the committee of creditors.

## **CHAPTER VIII**

### **INSOLVENCY RESOLUTION PROCESS COSTS**

#### **28. Insolvency resolution process costs.**

- (1) “Insolvency resolution process costs” shall include -
  - (a) the fees payable to any person acting as a resolution professional;
  - (b) the expenses incurred on and by the resolution professional for carrying out the insolvency resolution process, including the cost of engaging professional advisors, if any;
  - (c) finances raised for the insolvency resolution process, and costs incurred in raising such finances;
  - (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
  - (e) such other costs directly relatable to the insolvency resolution process which may be ratified by the committee of creditors.
- (2) The committee of creditors shall approve the costs mentioned in sub-regulation (1) (a), (b) and (c).

#### **29. Miscellaneous.**

The details and documents required to be submitted as per Section 95(7) shall be as per Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Individuals and Firms) Rules, 2017.

## FORM 1

### PROOF OF CLAIM BY A CREDITOR

*(Under Regulation 5 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017)*

[Date]

To  
The Resolution Professional  
[Name of the Resolution Professional]  
[Address as set out in public announcement]

From  
[Name and address of the creditor]

**Subject:** Submission of proof of claim.

Madam/Sir,

[Name of the creditor], hereby submits this proof of claim in respect of the insolvency resolution process in the case of [name of debtor].

The details for the same are set out below:

PARTICULARS				
1.	Title and full name of creditor			
2.	Identification number of creditor	AADHAR	PAN	CIN
3.	Address	Present	Permanent	Business
4.	Total amount of claim (Including any interest as on the insolvency commencement date)			
5.	Details of documents by reference to which the debt can be substantiated.			

<b>PARTICULARS</b>	
6.	Details of any dispute, as well as the record of such dispute.
7.	Details of how debt was incurred and the date when such debt was incurred
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the debtor and the creditor, which may be set-off against the claim
9.	Details of any retention of title arrangements in respect of goods or properties to which the claim refers
10.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a repayment plan
11.	Details of any security held (including value and date when it was given)
12.	List of documents attached to this proof of claim in order to prove the existence and non-payment of claim due to the creditor
13.	Following information regarding the debtor (to the extent known):
	Assets of the debtor
	Business of the debtor
	Firms in which debtor is a partner
	Bank account details of the debtor
	Name, age and address of spouse, children, parents and siblings of the debtor.
Signature of creditor or person authorised to act on his behalf <i>[Please enclose the authority if this is being submitted on behalf of a creditor]</i>	
Name in block letters	
Position with or in relation to creditor	

PARTICULARS
Address of person signing

**AFFIDAVIT**

I, *[name of deponent]*, currently residing at *[insert address]*, do solemnly affirm and state as follows:

1. *[Name of debtor]*, the debtor was, at the insolvency commencement date, being the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, justly and truly indebted to me to the sum of INR *[insert amount of claim]*.

2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

*[Please list the documents relied on as evidence of claim]*

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

4. In respect of the said sum or any part thereof, I have not, nor has any person by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

*[Please state details of any mutual credit, mutual debts, or other mutual dealings between the debtor and the creditor which may be set-off against the claim.]*

5. The right to file my claim is not barred by limitation as per the applicable law.

Solemnly, affirmed at *[insert place]* on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Before me,  
Notary/ Oath Commissioner

Deponent's  
signature

**VERIFICATION**

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph \_\_\_ to \_\_\_ of this affidavit are true and correct to the best of my knowledge and belief and that no material facts have been concealed therefrom.

Verified at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_

Deponent's  
signature

## FORM 2

### PROXY FORM

(Under Regulation 21 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2017)

Full name of the debtor:

[Insert matter name / application number for the insolvency resolution process]

Full Name of Creditor	
Present address	
Permanent address	
Business address	
Email ID	

I being [insert name of creditor] holding [insert voting share] of the debt of the debtor, hereby appoint:

1.	Full name	
	Present / Permanent / Business Address	
	E-mail id	
	Signature	

or failing him;

2.	Full name	
	Present / Permanent / Business Address	
	E-mail id	
	Signature	



as my proxy to attend and vote for me and on my behalf at the meeting of committee of creditors to be held on *[insert date and time of meeting]* at *[insert venue of the meeting]*, and at any adjournment thereof in respect of the matters indicated in the notice of the meeting *[provide details of the notice]*, as listed below:

*[insert matters as listed in the agenda]*

Signed this *[insert date]* day of *[insert month]* *[insert year]*

Signature of creditor:

Signature of proxy holder(s):