



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 and Bankruptcy Code, 2016 in respect
of Personal Guarantors to Corporate Debtors; Partnership Firms
and Proprietorship Firms; and Other Individuals)**

OCTOBER 2018

PREFACE

The Insolvency and Bankruptcy Code, enacted in 2016, has reconceptualised the insolvency framework in India. The aim of the Code has been to establish a creditor-in-control regime, increase reliance on market mechanism for insolvency and introduce strict timelines for insolvency processes. Regarding insolvency of individuals, the Code has focused on providing collective resolution for debts of the debtor, enabling an ‘earned start’ for the debtor and achieving resolution through inexpensive and quick mechanisms. In the two years since the Code’s enactment, the provisions regarding insolvency resolution and liquidation of corporates have been fully operationalised. The provisions relating to insolvency of individuals, encapsulated in Part III of the Code, are pending notification.

The present working group has been deliberating on the issues relating to insolvency of individuals, and has been working on drafting of the subordinate legislation in this regard to enable operationalisation of Part III of the Code. During this process, the working group has come across differences in socio-economic circumstances of various categories of individuals and has deemed it prudent that the approach towards insolvency vary depending on such differences.

The working group has therefore, proposed that a separate set of rules and regulations be made for separate categories of individuals under Part III of the Code- (i) individuals who are personal guarantors to corporate debtors, (ii) individuals engaged in partnership or proprietorship firms, and (iii) individuals without businesses. Along with this essential distinction in treatment, the working group also endorses the view that the Code and the respective subordinate legislation for the three categories of individuals above may be implemented in phases.

The former working group submitted its report along with a draft of the rules and regulations for insolvency resolution process for partnership firms and individuals (including personal guarantors to corporate debtors). It had also started working on draft rules and regulations for bankruptcy under Part III of the Code. The report of the former working group along with the draft rules and regulations for insolvency resolution under Part III of the Code went through several rounds of consultation and through review based on- (i) inputs from public comments received by IBBI; (ii) round tables conducted in various cities across the country; (iii) recommendations of the IBBI Advisory Committee on Individual Insolvency and Bankruptcy; and (iv) discussion of the Governing Board of IBBI, in its meeting in December, 2017.

In this regard, the working group is submitting its draft rules and regulations for the insolvency resolution process for personal guarantors to corporate debtors by suitably modifying the draft rules and regulations submitted by the former working group. However, the changes proposed in the draft rules and regulations are not substantive in nature. The approach of these rules and regulations has been similar to the approach adopted for the insolvency processes of corporate debtors under the Code. This is due to similarities in the underlying debt and economic exposure of personal guarantors to the corporates for whom they have given a guarantee. These rules and regulations are now submitted to the Insolvency and Bankruptcy Board of India, along with this report, for its valuable and due consideration.

Further, the working group intends to continue in its endeavour to suggest mechanisms to streamline the processes for insolvency and bankruptcy of the other categories of individuals under Part III of the Code. The working group aims to analyse existing jurisprudence regarding insolvency of individuals, identify the degree of differentiated treatment for these categories of individuals, cause IBBI to commission studies and comparative analysis of insolvency and bankruptcy of individuals in other jurisdictions and suggest effective alternate resolution mechanisms for individuals without businesses, and indicate areas of further study to achieve these aims.

I am hopeful that the recommendations of the working group highlighted in this report will provide a further impetus to strengthen the insolvency resolution framework for individuals in India and aid in effectively implementing provisions of Part III of the Code.

[Name and Signature]

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BACKGROUND

1. The Insolvency and Bankruptcy Board of India (IBBI), *vide* an order dated 15th June, 2017, constituted a Former Working Group¹ (FWG) to recommend the strategy and approach for implementation of provisions relating to insolvency and bankruptcy of individuals and partnership firms, under Part III of the Insolvency and Bankruptcy Code, 2016 (Code). This comprised of drafting of rules and regulations for insolvency and bankruptcy processes relating to: (i) personal guarantors to corporate debtors, and (ii) partnership firms and other individuals. Before its dissolution, the said FWG submitted, , its report along with a draft of the rules and regulations for insolvency resolution process for partnership firms and individuals (including personal guarantors to corporate debtors). It had also started working on draft rules and regulations for bankruptcy under Part III of the Code.
2. The report of the FWG along with the draft rules and regulations for insolvency resolution under Part III of the Code went through several rounds of consultation and through review based on- (i) inputs from public comments received by IBBI; (ii) round tables conducted in various cities across the country; (iii) recommendations of the IBBI Advisory Committee on Individual Insolvency and Bankruptcy, constituted on 15th September, 2017 under the Chairpersonship of Mr. Justice B. N. Srikrishna; and (iv) discussion of the Governing Board of IBBI, in its meeting in December, 2017.
3. The IBBI decided that phase-wise implementation be undertaken for Part III of the Code, and that insolvency resolution for personal guarantors to corporate debtors be implemented to begin with. The draft rules for insolvency resolution process of individuals and firms, as suggested by the FWG and reviewed through processes listed under paragraph 2 above, were forwarded by IBBI to the Central Government for its consideration.

FURTHER DEVELOPMENTS

4. In the meantime, the following developments took place:
 - (a) The Code was amended on 23rd November, 2017² classifying applicability of Part III of the Code to three categories of individuals, i.e. (i) personal guarantors to corporate debtors; (ii) individuals with partnership firms or sole proprietorships, and (iii) other individuals.
 - (b) The Chairperson of the FWG, Mr. Amarjeet Singh Chandiok, expressed his inability to continue due to personal reasons.
 - (c) By an order dated 4th May, 2018, the IBBI formed a Reconstituted Working Group (RWG) , under the chairmanship of Mr. P.K. Malhotra, to recommend the strategy and approach for implementation of the provisions of the Code dealing with insolvency and bankruptcy in respect of (i)

¹ This FWG was formed under the Chairpersonship of Mr. Amarjeet Singh Chandiok, President, INSOL India.

² This amendment is reflected by insertion of section 2(e), (f) and (g) through the Insolvency and Bankruptcy (Amendment) Act, 2018.

personal guarantors to corporate debtors; (ii) partnership firms and proprietorship firms; and (iii) other individuals. A copy of the order dated 4th May, 2018 is at ‘**Annexure A**’ to this report.

MEETINGS OF THE RWG

5. The RWG had its first meeting on 13th June, 2018. A sub-group³, under the Chairmanship of Mr. Sumant Batra, was set up by the RWG to examine the various provisions of the Code in the light of the amendments to the Code and suggest changes, if any, required in the draft rules and regulations framed by the FWG. Thereafter, the RWG met on 29th August, 2018 and 10th September, 2018 to discuss alterations to be made to the draft rules and regulations for insolvency resolution process prepared by the FWG. Comments and inputs received from the members of the RWG and the suggestions given by the sub-group were also considered by the RWG.

RECOMMENDATIONS OF RWG

A. Separate Rules and Regulations

6. The RWG noted that in view of the amendment to the Code classifying each class of individuals to which the Code applies, i.e. (i) personal guarantors to corporate debtors; (ii) partnership firms and proprietorship firms; and (iii) other individuals, have distinct peculiarities, characteristics and dynamics, notwithstanding the individual being a common factor in all these three categories. Individuals are engaged in a wide variety of activities with diverse implications for debt and indebtedness. Insolvency of an individual can arise from a diverse range of causes. For example, it may arise as a direct consequence of business activity if an individual has been engaged in business.
7. Individuals quite commonly carry heavy debt loads after termination of business activities. This kind of debt load may derive from a business that debtors have carried out in their own name or in a partnership, in which the partners have personal liability for the debts of the partnership. Quite often, debtors have become personally liable for debts because they had executed personal guarantees for the financial assistance availed by a company or a limited liability partnership. Such debtors may have different connections with such company or limited liability partnership, for example, as shareholders or directors or partners of the company or as next of kin of such persons. Persons who engage in small-scale business activity in their own name are often essentially in a similar situation as wage-earning debtors who have become insolvent.⁴
8. Individuals may also become indebted in their private, non-business capacity. Insolvency of individuals without business interest demands a process that is easily accessible, simpler and cost effective. Insolvency relief for individuals

³ This sub-group comprised of Mr. Sumant Batra, Dr. Shylendra, Ms. Aishwarya Satija from the Vidhi Centre for Legal Policy and representatives of the IBBI.

without business includes elements of humanitarian empathy. Insolvency regimes for individuals involves salient issues of data protection and personal privacy, as well as a whole host of social issues, such as individual counselling, education, social welfare provision, cultural and religious sentiments and family and housing policy issues. .

9. The dynamics, conditions and factors involved in the insolvency and bankruptcy of individuals without business interest and individuals who have extended personal guarantee to corporate debtors or carry out business activities through partnership firms or proprietorship firms are likely to be different. Individuals with business are likely to behave in a way consistent with the classical economic ideals on which business insolvency systems are founded. On the other hand, the behaviour of individuals without business interest is expected to be somewhat informal. In his paper, *An Economic-Legal Perspective*⁵, Dr. Bibek Debroy notes the importance of informal issues in individual insolvency, the importance of friends and family, and informality in settlement of dues.
10. The RWG is of the view that while insolvent individuals face a shared core of key issues, whether or not business activity is a part of the context of the insolvency, personal guarantors and individuals with businesses carrying out economic activities require a different treatment due to economic considerations, number of creditors involved, personal guarantee and assets of guarantors, if any and other relevant factors involved.
11. **The RWG is of the considered view that in the design and implementation of an insolvency regime for the three classes of individuals, it is most likely the case that one size does not fit all. Therefore, it has been decided to propose a separate set of rules and regulations, and make other suitable recommendations, for the strategy and approach for implementation of the provisions of the Code dealing with insolvency and bankruptcy in respect of each of the three classes of individuals to which the Code applies.**

B. Phased Implementation

12. Implementation of the provisions of the Code dealing with insolvency and bankruptcy of partnership and proprietorship firms and other individuals will impact a large population of the country. A deeper understanding is required of the nature and composition of credit extended by financial institutions and other lenders to partnership and proprietorship firms, and the issues faced by such firms. In this regard, it is necessary to gather and study data and statistics for effective design of the procedural aspects of insolvency resolution of individuals and partnership firms under the Code. The RWG feels that such gathering of data, and its analysis, is likely to consume considerable time. Hence, this may be dealt with by the planned subsequent report of the RWG.
13. As also noted by the FWG in its report, individuals without business interest

⁵Bibek Debroy and Laveesh Bhadari, '*Small Scale Industry in India Large Scale Exit Problems*', (Academic Foundation, 2004).

often lack financial and legal sophistication. Insolvency procedures frequently require production of financial and legal documents as well as navigation through complex legal processes. The majority of insolvency and bankruptcy proceedings involving individuals without business may not involve contentious issues, voluminous stakeholders, and high amount of debt or disputes justifying direct adjudication by authorities such as Debt Recovery Tribunals (DRT). Issues relating to such individuals might well be more efficiently resolved with the intervention and assistance of a trained cadre of resolution mediators.

14. The RWG agrees that non-judicial assistance is crucial in insolvency law for individuals carrying business activities through partnership and proprietorship firms and other individuals and that the legal framework should encourage informal negotiation and resolution as a first resort to enable the creditors and debtors to resolve issues in the shadow of insolvency. Similarly, as noted by the FWG, counselling is a critical component of individual bankruptcy. It is essential not only to prevent repeat bankruptcies but also to further rehabilitative goals of behaviour modification. The RWG concurs that there are many advantages of this informal process. The debtor may have an incentive to make a higher offer to creditors by avoiding the court procedure, which benefits 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 court procedures, as it saves both time and resources. Mediation and counselling are known practices prevalent in most sophisticated jurisdictions. The RWG is of the view that a comparative study of the practices prevalent in other jurisdictions would be useful. The RWG feels that comprehending a complete framework for counselling and mediation is likely to consume considerable time. Hence, this may be dealt with by the subsequent report of the RWG.
15. The RWG is of the view that addressing the issue of stigma will be key to the successful outcome of individual insolvency law, in particular in respect of its implementation in relation to individuals who run small business activities through partnership and proprietorship firms and other individuals. As also noted by the FWG, the notion of announcing one's failure, either in writing or in person before public can be deeply embarrassing and stigmatizing, 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 debts is dealt with through informal cultural traditions, or if 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 may refrain from using it. 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. The informal mechanism may assuage any other kind of fears linked to formal processes. The RWG is of the view that this topic can be addressed through financial literacy training and counselling. Financial literacy education is crucial not only for treating an existing state of insolvency, but also that its primary purpose is to prevent its recurrence as well. The RWG proposes to examine how the issue of stigma was addressed in jurisdictions where the individual insolvency law has been in active use for many years.

16. Currently, India does not have rich experience in dealing with individual insolvency and bankruptcy in a structured manner. Going forward, the RWG envisages difficulties in implementing effective insolvency resolution for individuals and feels that mediation and counselling would be useful complementary mechanisms to the structure for insolvency of individuals in the Code. To have a mediation and counselling procedure in the Code, some further changes in the law would be required. But it is first useful to conduct a study to figure out all such changes required in the Code to operationalise mediation and counselling within the ambit of current law. In view of the above, the RWG proposes to commission or undertake studies, including a study of practices prevalent in other developed jurisdictions such as, UK, US, Singapore, Hong Kong, Australia, South Korea and Philippines for better understanding of the issues discussed above, with the support of IBBI. These studies may be undertaken by IBBI with the assistance of reputed institutions or individuals commissioned by IBBI on the request of the RWG. The RWG would suggest a suitable timeframe for such studies. The report of Bankruptcy Law Reforms Committee (BLRC) shows that it had immensely benefited from the research papers commissioned to help in its work. The RWG feels that such studies and their assessment are likely to consume considerable time. Hence, this may be dealt with by the subsequent report of the RWG.
17. On the other hand, the RWG noted that there are many common factors and linkages between the corporate debtor and personal guarantors to such corporate debtors under the Code. A ‘personal guarantor’ is defined in section 5(22) of the Code and *“means an individual who is the surety in a contract of guarantee to a corporate debtor.”* A contract of guarantee is defined under section 126 of the Indian Contract Act, 1872 as *“a contract to perform the promise, or discharge the liability, of a third person in case of his default.”* The person who gives the guarantee is called the ‘surety’, the person in respect of whose default the guarantee is given is called the ‘principal debtor’, and the person to whom the guarantee is given is called the ‘creditor’. Simply speaking, therefore, a personal guarantee is a promise, given by an individual to ensure that a third party fulfills its obligations and, if the third party fails to do so, then such individual will be liable to fulfill those obligations.
18. The RWG noted the following provision of the Code and other aspects relating to insolvency of a corporate debtor and a personal guarantor to the corporate debtor:
- (i) Section 60(1) envisages that the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal (NCLT) having territorial jurisdiction over the place where the registered office of a corporate person is located. Section 60(2) of the Code provides that without prejudice to sub-section (1) of section 60 and notwithstanding anything to the contrary contained in the Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before an NCLT, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, to such corporate debtor shall be filed before the same NCLT.

- (ii) Section 60(3) prescribes that an insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, to the corporate debtor, pending in any court or tribunal shall stand transferred to the NCLT dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.
- (iii) Section 60(4) provides that the NCLT shall be vested with all the powers of the DRT as contemplated under Part III of the Code for the purpose of section 60(2).
- (iv) Further, section 60(5) provides that notwithstanding anything to the contrary contained in any other law for the time being in force, the NCLT shall have jurisdiction to entertain or dispose of –
 - (a) any application or proceeding by or against the corporate debtor or corporate person;
 - (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
 - (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the Code.
- (v) Even though the contract of guarantee is an independent contract, section 128 of the Indian Contract Act, 1872 provides that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.
- (vi) The liability of the corporate debtor and the liability of the personal guarantor (although separate liabilities) arise out of the same transaction although they have additional liabilities from separate transactions.
- (vii) Whenever the debtor has failed voluntarily to perform an obligation, which is the subject of the guarantee, the creditor can recover from the personal guarantor as breach of his contract of guarantee whatever sum the creditor could have recovered from the corporate debtor himself as a consequence of that failure. The debtor's liability is also the measure of the guarantor's liability.⁶
- (viii) The personal guarantor, upon payment or performance of all that he is liable for, is vested with the rights the creditor had against the principal debtor based on subrogation principles.⁷

⁶ Lep Air v. Moschi, (1973) AC 331.

⁷ Subrogation is the substitution of another person in the place of the creditor, to whose rights he succeeds in relation to the debt. That change which puts another person in the place of the creditor, and which makes the right, the mortgage, or the security which the creditor has pass to the person who is subrogated to him - that is to say, who enters into his right. In India, the right of subrogation has been enunciated in sections 140 and 141 of the Indian Contract Act, 1872. Section 140 provides for the right of subrogation as follows:

"Rights of surety on payment or performance - Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or

- (ix) The resolution plan for a corporate debtor has to deal with personal guarantees given in respect of the corporate debtor.
 - (x) Section 14 of the Code was amended by Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 6th June 2018 to exclude a surety in a contract of guarantee to a corporate debtor from the purview of moratorium under the said provision.
 - (xi) Where a person who has executed a personal guarantee in favour of a creditor of a corporate debtor against which an application for insolvency resolution has been admitted under the Code, such guarantor is ineligible to submit a resolution plan for a corporate debtor if such guarantee has been invoked by the creditor and remains unpaid in full or part.⁸
19. In the absence of notification of provisions of the Code dealing with insolvency and bankruptcy of personal guarantors to corporate debtors, the creditors and personal guarantor are unable to invoke the provisions of the Code and access the remedies available under the Code.
20. **The RWG recommends that implementation of the provisions of the Code dealing with insolvency and bankruptcy of the three classes of individuals should be done in a phased manner.**
21. **In the first phase, the provisions of the Code dealing with insolvency and bankruptcy of personal guarantors to corporate debtors should be implemented. The provisions of the Code dealing with insolvency and bankruptcy of partnership and proprietorship firms may be implemented in the second phase. And, in the third phase, the provisions of the Code dealing with insolvency and bankruptcy of other individuals may be implemented. By then there may also be clarity in respect of provisions that may be made with regard to micro, small and medium enterprises pursuant to section 240A of the Code.**
22. To sum up, the RWG envisages difficulties in implementing the current provisions relating to insolvency for individuals without businesses and feels that mediation and counselling would be useful in this regard. **Therefore, the RWG is making recommendations only in respect of implementation of the provisions of the Code dealing with insolvency and bankruptcy of the personal guarantors to corporate debtors in this report.** To have provisions for mediation and counselling in the Code, some further changes in the Code would be required. This RWG recommends conducting a study to identify any

performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor".

When the surety has paid all that he is liable for he is invested with all the rights which the creditor had against the principal debtor. The surety steps into the shoes of the creditor. The creditor had the right to sue the principal debtor. The surety may, therefore, sue the principal debtor in the rights of the creditor.

⁸ See section 29A(h) of the Code.

changes required in the Code to operationalise the mediation and counselling within the ambit of the current law. Further, it is recommended to undertake studies on the kind of mediation and counselling mechanisms and practices prevalent to deal with complex individual insolvency matters as discussed above. These studies may be undertaken by IBBI with the assistance of reputed institutions or individuals commissioned by IBBI on the request of the RWG. In the meantime, RWG will continue its work on individual bankruptcy. After the proposed studies have been undertaken, the RWG will detail a complete framework for mediation and counselling and further suggest strategies necessary to implement the Code. **Keeping in view the complexity of individual insolvency, recommendations in respect of insolvency and bankruptcy of the partnership and proprietorship firms and insolvency and bankruptcy of other individuals would be made subsequently.**

C. Insolvency Resolution Process of Personal Guarantors to Corporate Debtors

23. The draft rules and regulations for insolvency resolution process of individuals (“**Draft Rules and Regulations**”) prepared by the FWG were posted for public comments and public consultation. Several round tables were conducted by IBBI in various cities for further consultation. The IBBI Advisory Committee on Individual Insolvency and Bankruptcy discussed and approved the Draft Rules and Regulations with some modifications. In relation to bankruptcy, the drafts of the rules and regulations were under consideration by the FWG. Therefore, the RWG adopted the said Draft Rules and Regulations as the starting point for its deliberations.

D. Modifications to the Draft Rules and Regulations

24. Based on its deliberations, the RWG recommends modifications, discussed below, in the Draft Rules and Regulations keeping in view that their application will be confined to insolvency resolution process of personal guarantors to corporate debtors. The summary of the key modifications in the Draft Rules and Regulations recommended by the RWG is discussed in paragraphs E and F. **However, the changes proposed in the Draft Rules and Regulations are not substantive in nature. In line with the changes discussed below, the modified Draft Rules are enclosed as ‘Annexure B’ and modified Draft Regulations are enclosed as ‘Annexure C’, with this report.**

E. Modifications to the Draft Rules

(i) Name/Title of Draft Rules

25. As discussed above, the Draft Rules and Regulations have been made for insolvency resolution process of personal guarantors to corporate debtors. Therefore, it is recommended that the title of the Draft Rules be modified from Insolvency and Bankruptcy (Application to Adjudicating Authority for Individual and Firms) Rules, 2018 to Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal

Guarantors to Corporate Debtors) Rules, 2018. Along with this, references made to individuals, other than personal guarantors, and partnership firms have been removed from the present Draft Rules.

(ii) Service of Application to corporate debtor

26. It was discussed by the RWG that a copy of the application filed against a personal guarantor be sent to the corporate debtor in case a corporate insolvency resolution process has been initiated against such corporate debtor. The RWG recommends that a copy of the application must be served on the corporate debtor in the above scenario.

(iii) Withdrawal of application

27. The Code has been recently amended through the Insolvency and Bankruptcy (Second Amendment) Act, 2018 to provide that the Adjudicating Authority may allow withdrawal of an application for corporate insolvency resolution process after its admission, if the committee of creditors with 90% of the voting share agrees.⁹ Ideally, such withdrawal should be permissible in case of individual insolvency also. The Draft Rules recommended by the FWG, in fact, permitted such withdrawal after admission with the permission of *all* creditors. It is recommended that the Code may be amended to provide such withdrawal in case of individuals and thereafter, this provision is incorporated in the Draft Regulations, not in Draft Rules, similar to corporate insolvency.

(iv) Fee

28. The fee recommended by the FWG for an application to be made to an NCLT was Rs. 1000 and for an application to be made to a DRT was Rs. 100. The FWG had kept the application fee low to account for other individuals since personal guarantors as a class of individuals did not exist at that time. The RWG is of the view that in light of the common underlying debt size involved in respect of the corporate debtor and personal guarantor, the application fee for personal guarantors may be revised to Rs. 5000 to bring it at par with the application fee payable for commencement of insolvency resolution process of corporate debtors.

(v) Disclosure of Directorships

29. It has been recommended that the application form for the debtor, pursuant to section 94 of the Code, mandates disclosure of the number of directorships held by the debtor (here, personal guarantor) in the last three years, along with names of companies in which such directorship is held.

F. Modifications made to the Draft Regulations

(i) Name/Title of Draft Regulations

⁹Section 12A of the Code.

30. The Draft Regulations have been made for insolvency resolution process of personal guarantors to corporate debtors. Therefore, it is recommended that the title of the Draft Regulations be modified from Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Individuals and Firms) Regulations, 2018 to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2018. Along with this, references made to individuals, other than personal guarantors, and partnership firms have been removed from the Draft Regulations.

(ii) Eligibility to be a ‘resolution professional’

31. The RWG discussed that an insolvency professional should not be eligible to be a resolution professional in relation to the insolvency resolution process of a personal guarantor to a corporate debtor, if he/she has been an interim resolution professional, resolution professional or liquidator for the corporate debtor, or is a related party of the Corporate Debtor.

(iii) Consent form for resolution professional

32. The Draft Regulations prepared by the FWG provide a declaration by an insolvency professional making an application under section 94 or 95 of the Code regarding qualification and consent for appointment as resolution professional. The RWG is of the view that a separate consent form may be added in the Draft Regulations, to account for instances when a resolution professional has not made the application and is selected at a later stage. Therefore, insertion of a separate consent form in this regard has been suggested in the Draft Regulations.

(iv) Notice for meeting of creditors

33. Section 106 of the Code provides that the notice for the first meeting of creditors shall be sent fourteen days before the date of such meeting. The Draft Regulations recommended by the FWG provided that for meetings subsequent to the first meeting, a notice of seven days may be given to the creditors. The RWG discussed that a fixed notice period of seven days may lead to delays in holding the meeting of creditors. It was, therefore, felt that for meetings of the creditors, other than the first meeting, the notice period may be, as has been agreed to by the creditors. However, this notice period may not be lesser than forty-eight hours prior to the proposed meeting.

(v) Quorum of meeting of creditors

34. The quorum for meeting of creditors was initially 75% of creditors in value. This was because the Draft Regulations were applicable to all individuals and partnership firms, and such persons and entities may have only a few creditors. However, the Draft Regulations recommended by the RWG apply only to personal guarantors in whose case also there could be multiple creditors, many of them being also the creditors of corporate debtor. The quorum requirement

has therefore, been made similar to corporate insolvency resolution process, that is, 33% of the creditors in value.

(vi) Voting share of creditors

35. It has been clarified in the Draft Regulations that the voting share of creditors shall be based on the debt owed to them.

(vii) Valuation by registered valuers

The Draft Rules made by the FWG provided that a valuer may undertake valuation with respect to the repayment plan, if required. It is clarified by the RWG that this shall mean a 'registered valuer' as registered under the Companies Act, 2013.

G. Increase in threshold for filing insolvency resolution

36. The RWG recommends that the Central Government may increase the threshold for initiating insolvency resolution under the Code. Section 78 of the Code currently provides that if a default of Rs.1000 takes place, a resolution process may be initiated against the debtor. The RWG feels that this is a low threshold where the debtor is a personal guarantor and it may lead to misuse by filing of frivolous cases. However, this has no bearing on Rules or Regulations.

37. Therefore, the RWG discussed that the threshold for filing insolvency resolution against personal guarantors may be increased to Rs. 1 lakh to bring it at par with corporate debtors. As per section 78 of the Code, this may be done through notification by the Central Government. The threshold limit for other individuals will be discussed in the next report of the RWG.

IMPLEMENTATION IN PHASES

38. Section 243 of the Code, which repeals the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920, has not come into force. Thus, the insolvency regime for partnership and proprietorship firms and individuals today are governed by these two statutes. The Code, however, provides for a complete framework for insolvency of three categories of individuals, as described in clauses (e), (f) and (g) of section 2 of the Code. Ideally, the provisions of section 2 (e), (f) and (g) and provisions of section 243 should come into force simultaneously so that there is no gap. However, as explained earlier, it is necessary to implement the individual insolvency regime in a phased manner.

39. The RWG notes as under:

- (a) The Statement of Objects and Reasons appended to the Insolvency and Bankruptcy Code (Amendment) Bill, 2017, provides rationale for classification of individuals into three categories, as under:

“The Code prescribes for the insolvency resolution and bankruptcy for individuals and partnership firms, which are proposed to be implemented in a phased manner on account of the wider impact of these provisions. In the first phase, the provisions would be extended to personal guarantors of corporate debtors to further strengthen the corporate insolvency resolution process and a clear enabling provision for the purpose has been provided in the Bill.”

- (b) The Central Government has the power to notify different dates for commencement of different provisions of the Code. It may notify section 2(e) immediately, and section 2(f) and 2(g) subsequently.
 - (c) The Central Government, vide a notification dated 30th November, 2016, appointed 1st December, 2016 as the date for commencement of clause (a) to clause (d) of section 2, except with regard to voluntary liquidation or bankruptcy, implying that a particular provision may be notified partially. Thus, section 243 of the Code could be notified partially.
 - (d) Wherever two or more possibilities or interpretations of a provision of law is possible, the Courts adopt the possibility or interpretation which furthers, rather than hinders the purpose or objectives of the law.
40. Thus, the proposal is to implement the provisions for insolvency of personal guarantors to corporate debtors under the Code to begin with for valid reasons discussed above, while provisions for insolvency of partnership and proprietorship firms and individuals will continue to be governed until further notification under the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. **It is the intention of the Legislature as is evident from the Statement of Objects and Reasons appended to the Bill as well as a practical necessity.** The issue is whether section 243 repealing the Presidency Town Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 can be notified partially to limit its repeal in respect of personal guarantors to corporate debtors only, as section 2(e) of the Code is brought into force. After detailed discussions, the RWG is of the considered opinion that there are four possible options to address this issue as under:
- (i) Bringing into force clause (e) of section 2 of the Code only. This would mean that there are simultaneously two frameworks - one under the Code and the other under the Presidency Town Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. It is for the stakeholders to choose either of the two competing options available.
 - (ii) Bringing into force section 243 partially, as was done vide the notification dated 30th November, 2016 referred to above. This would mean that while the Code applies for insolvency of personal guarantors to corporate debtors, the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920 would continue to apply to other individual insolvencies.
 - (iii) Amending the provision of section 243 through a removal of difficulties order to be issued under section 242 of the Code to provide that the repeal

of section 243 may be done in phases. Section 242 of the Code gives a wide power to the Central Government to make 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. This is in sync with the Statement of Objects and reasons appended to the Insolvency and Bankruptcy Bill, 2015.

- (iv) Amending section 243 of the Code by an Amendment Act to provide for repeal of the Presidency Town Insolvency Act, 1909 and Provincial Insolvency Act, 1920 in phases as may be relevant.

41. The Central Government may choose one of the above options or any other option, as it may consider appropriate.

42. In addition to the above, the RWG identified certain minor errors in the chapter for insolvency resolution process under Part III of the Code. **It may be noteworthy that these changes were not considered to be a prerequisite to the implementation of the Code and may not be necessary to give effect to insolvency resolution for personal guarantors.**¹⁰ However, these proposed errors have been produced below:

- (i) Sections 94 to 97 of the Code use the words “resolution professional” for an insolvency professional even before appointment of such insolvency professional for the insolvency resolution process. This is contrary to the definition of ‘resolution professional’ given in section 79(21). The words ‘insolvency professional’ may thus be used instead in these provisions, to ensure clarity.
- (ii) In Section 98(5) of the Code, the words “sub-section (1)” may be deleted as it appears to be a typographical error.
- (iii) The language used in Section 100(2) and 105(1) of the Code, may be misused to claim that corporate insolvency resolution process may be stayed or not initiated since an individual insolvency resolution process is ongoing and the debt is not settled. Clarification in this regard may be provided.
- (iv) In section 113, reference to “section 99” may be replaced with “section 112”, as this is a cross-referencing error.
- (v) In section 115(1) of the Code, clause (a) does not seem necessary. The intent behind the clause is not clear and may be omitted if it is not intended to be included in the Code.

PROPOSED WORK PLAN FOR THE RWG

¹⁰ Please note that if the need is felt to implement the listed changes, it may be done through a removal of difficulties order under section 242 of the Code.

43. The RWG wishes to undertake the following tasks:

- (a) Draft rules and regulations on bankruptcy of personal guarantors to corporate debtors;
- (b) Define the scope of study to be undertaken to understand ground realities better and of the practices prevalent in other jurisdictions for effective design of the procedural aspects of insolvency resolution of individuals and partnerships under the Code;
- (c) Develop a comprehensive framework for mediation and counselling for individual insolvency and bankruptcy;
- (d) Recommend changes in the Code required to facilitate individual insolvency and bankruptcy; and
- (e) Draft rules and regulations for insolvency and bankruptcy of partnership and proprietorship firms and other individuals.



भारतीय दिवाला और शोधन अक्षमता बोर्ड Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Connaught Place, New Delhi-110001

Tel: +91 11 23462900, +91 11 23462800

Fax +91 11 23462902, Web.: www.ibbi.gov.in

File No. IBBI/Ind. Bankruptcy/1/2018-19

Date: 4th May 2018

ORDER

Subject: Reconstitution 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 Individuals.

In supersession of the Office Memorandum No. IBBI/Indiv-Insol/1/2017-18 dated 13th June, 2017, the Working Group is hereby reconstituted 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, ii) Partnership Firms and Proprietorship Firms and iii) Other Individuals:

2. The Working Group shall comprise of :-

Sl. No.	Name and Designation	Chairperson/Member
1	Mr. P. K. Malhotra, Former Secretary, Department of Legal Affairs and Legislative Department, Government of India	Chairperson
2	Mr. Sumant Batra, President, SIPI	Member
3	Mr. Jiji Mammen, MD & CEO, MUDRA	Member
4	Mr. Anil Bhardwaj, Secretary General, FISME	Member
5	Mr. Vijay Mahajan, Chairman, BASIX	Member
6	Dr. H. S. Shylendra, Professor, IRMA, Anand	Member
7	Ms. Bindu Ananth, Chairperson, IFMR	Member
8	Mr. Sankar Chakraborti, CEO, SMERA	Member
9	A Representative of the Ministry of Corporate Affairs	Member
10	Mr. Sunil Pant, CEO, IIP of ICAI (Chartered Accountant)	Invitees
11	Mr. Sanjeev Ghai, CEO, IPA of ICAI (Cost Accountants)	Invitees
12	Ms. Alka Kapoor, CEO, IIP of ICSI	Invitees
13	Mr. Prasanna Prakash Panda, CGM, IBBI	Member Secretary

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

Prasanna
(Prasanna Prakash Panda)

Chief General Manager

011-23462873

Email : pppanda@ibbi.gov.in

Copy to.

1. The Chairperson and Members of the Working Group
2. Ps to Chairperson, IBBI
3. Ps to WTMs, IBBI

DRAFT
MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION

New Delhi, the [...] [...], 2018

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 read with clause (e) of section 2 and sub-sections (2) and (3) of section 60 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 Personal Guarantors to Corporate Debtors) Rules, 2018.
(2) They shall come into force from the [...] day of [...], 2018.
- 2. Application.** — These Rules shall apply to matters relating to the insolvency resolution process for personal guarantors to corporate debtors 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) 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) in all other cases as applicable.
 - (b) “debtor” means a personal guarantor to a corporate debtor, i.e. a person who is a surety in a contract of guarantee to a corporate debtor;
 - (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) “insolvency resolution process” means insolvency resolution process for individuals and firms under part III of the code;

(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 for insolvency resolution process under section 94(1) in Form A.
(2) The debtor shall within three days of submitting the application to the Adjudicating Authority, dispatch a copy of the application filed with the Adjudicating Authority to -

- (a) the last known address of the creditor(s), by registered post, speed post or courier, whichever is available, provided that an acknowledgment of receipt of application is received for at least one mode of service, and in any event through electronic means at the last known e-mail address;
- (b) the last known address of the corporate debtor for whom the debtor is a personal guarantor, if a corporate insolvency resolution process has been initiated against such corporate debtor, by registered post, speed post or courier, whichever is available, provided that an acknowledgment of receipt of application is received for at least one mode of service, and in any event through electronic means at the last known e-mail address.

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), in the format prescribed in Form B.

(2) The demand notice shall be delivered at the last known address of the debtor, by registered post, speed post or courier, whichever is available, provided that an acknowledgment of service of notice is received for at least one mode of service, 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, a copy of the demand notice shall be affixed at the outer door or some other conspicuous part of the house or building in which the debtor ordinarily resides or carries on business or personally works for gain, and shall be deemed to be delivered.

(4) A copy of the demand notice delivered under this section shall also 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 a debtor under section 95, in Form C.

(2) The creditor shall, within three days of submitting the application to the Adjudicating Authority, dispatch a copy of the application filed with the Adjudicating Authority to-

- (a) the last known address of the debtor by registered post, speed post or courier, whichever is available, provided that acknowledgment of service of notice is received for at least one mode of service, and in any case through electronic means at the last known e-mail address;
- (b) the last known address of the corporate debtor for whom the debtor is a personal guarantor for the debt of a creditor applying under sub-rule (1), if a corporate insolvency resolution process has been initiated against such corporate debtor, by registered post, speed post or courier, whichever is available, provided that an acknowledgment of receipt of application is received for at least one mode of service, and in any event through electronic means at the last known e-mail address.

(3) 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, the Adjudicating Authority shall provide a copy of the application to such resolution professional within three days of his appointment.
8. **Report of the resolution professional.** — (1) The report prepared by the resolution professional under section 99 shall be submitted to the Adjudicating Authority within seven days from the time-period prescribed for examination of application in section 99(1).
(2) A copy of the report prepared by the resolution professional under section 99 shall be provided by the resolution professional to the applicant within three days from the date of 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]*
(3) 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.
(4) 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, financial institutions or any other person, which should be furnished within seven days of the receipt of the request.
(5) 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 Five Lakh 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 of Debt Recovery Tribunal (Rules), 1993 issued under section 36 of the Recovery of Debts and Bankruptcy Act, 1993 and regulations 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 (2) 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. —

- (1) 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.
- (2) An application under rule 4 or 6 may be withdrawn after admission through a creditors' resolution if ninety percent of the creditors agree to such withdrawal.

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 5000.

- (2) An application under rule 4 or 6 filed with the Debt Recovery Tribunal, shall be accompanied by a fee of INR 5000.

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 A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2017.

FORM A

(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 Personal Guarantors to Corporate Debtors) Rules, 2018)

[Date]

To,

The Adjudicating Authority

[Address]

From,

[Name and 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

PARTICULARS OF THE DEBTOR				
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.	Address	Present	Permanent	Business
5.	Occupation/ Business/ Profession			
6.	Annual income			

7.	List of associates of the debtor, including relatives, who may be creditors	Name	Age	Address	
8.	Bank account details (Joint and Several)	Account number	IFSC code	Name of Bank and Branch address	
9.	Identification number	Aadhaar number	Passport number	PAN	GSTIN
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	Excluded asset or not
		Movable	Description	Estimated value	Excluded asset or not
		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.	Number of directorships held in the last three years (along with name of company in which directorship is held)				
13.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other)				
14.	Details regarding guarantee given by debtor (in addition to information in point 1-13 of this part) -				
	Name of corporate debtor for which guarantee is given				
	Any current or past position held in the corporate debtor				
	Identification number of corporate debtor				

	Whether corporate debtor is an associate	
	Any securities held in corporate debtor for whom guarantee is given	
15.	Name and address of person resident in India authorised to accept the service of process on debtor's behalf, along with the authority letter.	

Part – II

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

BUSINESS PARTICULARS OF DEBTOR		
1.	Name of business and form of business	
2.	Details of any registration	
3.	Description of business	
4.	Business address	
5.	Annual income of debtor	
6.	If business organization is a firm, details mentioned below.	
(i)	Date of joining firm	

(ii)	Capital subscription as per latest balance sheet	
(iii)	Profit sharing as per latest balance sheet	
(iv)	Name, address and authority of person submitting application on behalf of the firm	

Part - III

PARTICULARS OF DEBT [CREDITOR WISE, AS APPLICABLE]				
1.	Name(s) of creditor(s)			
2.	Address	Present	Permanent	Business
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"> (i) liability to pay fine imposed by a court or tribunal; (ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation; (iii) liability to pay maintenance to any person under any law for the time being in force; (iv) liability in relation to a student loan; (v) any other debt prescribed under section 79(15)(e) of the code.

Part - IV

PARTICULARS OF & DECLARATION BY RESOLUTION PROFESSIONAL (IF APPLICATION FILED THROUGH RESOLUTION PROFESSIONAL)

1.	Title and full name			
2.	In case associated with an Insolvency Professional Entity (IPE), details of the IPE and nature of association.			
3.	Address	Present	Permanent	Business
4.	E-mail address(es)			
5.	Contact number	Home	Mobile	Business

<p>6.</p>	<p>Declaration by resolution professional</p>	<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"> (i) agree to accept appointment as the resolution professional if an order of appointment is passed by the Adjudicating Authority; (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; (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>]; (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>]; (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 Personal Guarantors) Regulations, 2017. (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>]. <p>(Signature of the insolvency professional)</p>
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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 / person authorised to act on behalf of the debtor [<i>Please enclose the authorisation document if this application is being submitted on behalf of the debtor</i>]
Name in block letters
Address of person signing

DECLARATION

I, [*Name of applicant*], currently residing at [insert address], hereby declare and state as follows:

1. In respect of my application for insolvency resolution process, I have relied on the documents specified below: [*Please list the documents relied on*].
2. The contents of the said application along with the said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.

Date:
Place:

(Signature of the applicant)

VERIFICATION

I, [*name of applicant*], do hereby verify that the contents of this application are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at _____ on this _____ day of _____ 201__

Applicant's signature.

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 personal guarantee contract.
4. Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891)
5. The latest and complete copy of the financial contract reflecting all amendments and waivers to date.
6. Relevant ownership and title documents for all assets.
7. Copy of the authorization, wherever required under this form.
8. Proof that the application fee has been paid.
9. Documentary evidence of all information sought in each entry for each part of the form.
10. 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) wealth tax statements filed by the debtor, if any, for the previous five years;
 - (vii) income statement of the debtor, for the previous three years;

FORM B

(See sub-rule (1) of rule 5)

FORM OF DEMAND NOTICE

(Under rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2018)

[Date]

To,

[Name and address of the registered office of the debtor]

From,

[Name and address of the creditor]

Subject: Demand notice in respect of unpaid debt in default due from [debtor] under the code.

Madam/Sir,

1. This letter is a demand notice of unpaid debt in default due from [name of debtor].
2. Please find particulars of the unpaid debt in default below:

PARTICULARS OF DEBT		
1.	Total outstanding debt (including any interest or penalties)	
2.	Amount of debt in default	
3.	Date when the debt was due	
4.	Date when the 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, from the date on which the debt was incurred	
14.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	

3. If you believe that the debt has been repaid before the receipt of this notice, please demonstrate such repayment by sending to us, within fourteen days of receipt of this notice, the following:
- (a) an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the debtor; or

- (b) evidence of encashment of cheque for the unpaid amount issued by the debtor;
or
 - (c) an attested copy of any record that [*name of the creditor*] has received the payment.
4. The undersigned request you to unconditionally repay the unpaid debt in default in full within fourteen days from the receipt of this letter failing which we shall initiate an insolvency resolution process in respect of [*name of debtor*].

Yours sincerely,

Signature of creditor/person authorised to act on behalf of the creditor [<i>Please enclose the authorisation document if this notice is being issued on behalf of the creditor</i>]
Name in block letters
Address of person signing

Instructions

1. Please serve a copy of this notice on the debtor, fourteen days in advance of filing an application under section 95 of the code.
2. Please attach a copy of such served notice with the application made by the creditor to the Adjudicating Authority.

FORM C

(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 Personal Guarantors to Corporate Debtors) Rules, 2018)

[Date]

To,

The Adjudicating
Authority

[Address]

From,

[Name and 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

PARTICULARS OF APPLICANT					
1.	Title and full name				
2.	Date of birth and e-mail address				
3.	Contact number(s)	Home	Mobile	Business	
4.	Identification number	Aadhaar number	CIN	PAN	GSTIN
5.	Address	Present	Permanent	Business	

6.	Bank Account details (Joint and Several)	Account Number	IFSC Code	Name of the Bank and Branch Address

Part – II

PARTICULARS OF THE DEBTOR				
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.	Address	Present	Permanent	Business
5.	Occupation/ Business/ Profession			
6.	Annual income (to the extent known)			
7.	List of associates of the debtor, including relatives, who may be creditors (to the extent known)	Name	Age	Address
8.	Bank account details (Joint and Several)	Account number	IFSC Code	Name of the bank and Branch address

9.	Identification number	Aadhaar number	Passport number	PAN	GSTIN
10.	Contact number(s)	Home	Mobile	Business	
11.	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	Excluded asset or not
		Movable	Description	Estimated value	Excluded asset or not
		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.	Number of directorships held in the last three years (along with name of company in which directorship is held)				
13.	Marital status (single, married, divorced, widowed, cohabiting, separated, or specify any other) (to the extent known)				
14.	Details regarding personal guarantor (in addition to information in points 1-13 of this part) -				
	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 of the corporate debtor				
	Whether corporate debtor is an associate (to the extent known)				
	Any securities held in corporate debtor for whom guarantee is given				

15.	Name and address of person resident in India authorised to accept the service of process on debtor's behalf	
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Part-III

PARTICULARS OF DEBT		
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.	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 (attach proof)	
10.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	

11.	Record of default with the information utility, if any (attach a copy)	
12.	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)	
13.	Provision of law, contract or other document under which debt has become due (attach a copy)	
14.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the debtor, from the date on which the debt was incurred (attach a copy)	
15.	List of documents attached to this application in order to prove the existence of debt and the amount in default	
16.	Statement by creditor in respect of excluded debts	<p>I [<i>creditor</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"> (i) liability to pay fine imposed by a court or tribunal; (ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation; (iii) liability to pay maintenance to any person under any law for the time being in force; (iv) liability in relation to a student loan; (v) any other debt prescribed under section 79(15)(e) of the code.

17.	If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will determine the voting share as per section 110 of the code	<input type="checkbox"/> I agree to forfeit my right to enforce my security <i>[insert description]</i> during the period of the repayment plan. <input type="checkbox"/> I do not agree to forfeit my right to enforce my security <i>[insert description]</i> during the period of the repayment plan.
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Part-IV

PARTICULARS OF & DECLARATION BY RESOLUTION PROFESSIONAL (IF APPLICATION FILED THROUGH RESOLUTION PROFESSIONAL)			
1.	Title and full name		
2.	In case associated with an Insolvency Professional Entity (IPE), details of the IPE and nature of association.		
3.	Address	Present	Permanent
			Business
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"> (vii) agree to accept appointment as the resolution professional if an order of appointment is passed by the Adjudicating Authority; (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; (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>]; (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>]; (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 Personal Guarantors) Regulations, 2017; (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>]. <p>(Signature of the insolvency professional)</p>
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[Name of the creditor] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

Signature of creditor/ person authorised to act on behalf of the creditor [<i>Please enclose the authorisation document if this application is being submitted on behalf of the creditor</i>]

Name in block letters

Address of person signing

List of documents to be attached to the application:

1. All documents mentioned in serial number 15 of part III of this form.
2. Copy of the demand notice served on the debtor in Form B.
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.
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 Personal Guarantors to Corporate Debtors) Rules, 2018)

1. Calculation of threshold value of a dwelling unit

Threshold value of dwelling unit = Adjusted threshold carpet 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 RESIDEX HPI@Assessment Prices released by the National Housing Bank.

Explanation:

Table: Adjusted threshold carpet area of dwelling unit

Urban and Rural

Number of persons in dwelling unit	Adjusted threshold carpet 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%

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY
RESOLUTION PROCESS FOR PERSONAL GUARANTORS TO
CORPORATE DEBTORS) REGULATIONS, 2018**

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 read with clause (e) of section 2 and sub-sections (2) and (3) of section 60 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 Personal Guarantors to Corporate Debtors) Regulations, 2018.
- (2) These Regulations shall come into force on [●] 2018.
- (3) These Regulations shall apply to the insolvency resolution process for personal guarantors to corporate debtors under part III of the code.

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 personal guarantors in all other cases as applicable.
 - (b) “debtor” means a personal guarantor to a corporate debtor, i.e. a person who is a surety in a contract of guarantee to a corporate debtor;
 - (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 creditors and includes the creditors, the debtor, the resolution professional and any other person authorised through a creditors’ resolution 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 27;
 - (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;
 - (j) “registered valuer” means a person registered as such in accordance with the Companies Act, 2013 (18 of 2013) and rules made thereunder.
- (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-
- (a) if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are not associates of the debtor or the insolvency professional entity of which he is a partner or director is not an associate of the debtor;
 - (b) if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, have not been appointed as an interim resolution professional or resolution professional or liquidator in respect of a corporate debtor for whom the debtor is a personal guarantor;
 - (c) if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are not related parties of the corporate debtor for whom the debtor has given a personal guarantee or the insolvency

professional entity of which he is a partner or director is not a related party of the corporate debtor for whom the debtor has given a personal guarantee;

(d) if he, or the insolvency professional entity of which he is a partner or director, against whom disciplinary proceedings are pending or who has been issued a restraint order by the Board.

- (2) 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.
- (3) Where an insolvency professional is to be appointed as a resolution professional and the application under section 94 or 95 is not filed through such insolvency professional, he shall provide written consent to the Adjudicating Authority under Form A.

Explanation: For the purposes of this regulation, 'related party' shall have the meaning assigned to it in section 5(24) of the Code.

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 claim with proof.

- (1) A creditor shall submit a claim with proof to the resolution professional on or before the last date mentioned in the public announcement, in Form A.
- (2) Form B 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 claim with proof 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 under sub-regulation (3), shall be entitled to participate in the meetings of creditors, if such creditor is included in the list of creditors as per regulation 6.
- (5) The inclusion of a creditor under sub-regulation (4) shall not affect the validity of any decision taken in any meeting 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 list of creditors prepared under sub-regulation (1) to the Adjudicating Authority.
- (3) The list of creditors 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 official website, if any, of the debtor;
 - (d) presented at the first meeting of creditors.

7. 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, till the approval of a repayment plan by the creditors.

8. 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) income statement of the debtor, for the previous three years;
 - (d) secured and unsecured debts with names of the creditors, and all requisite details for the previous three years;
 - (e) particulars of debt owed by debtor to associates of the debtor for the

previous three years;

- (f) guarantees given in relation to any of the debts of the debtor, and whether any of the guarantors is an associate of the debtor;
- (g) 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;
- (h) details of the wealth tax statements filed by the debtor, if any, for the previous five years.

9. 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

10. Meetings of creditors.

- (1) A resolution professional may convene a meeting of creditors 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 creditors other than the meeting as specified in regulation 11(1) shall be called by giving such notice to every participant as decided by creditors, provided that such notice shall be given not be less than forty eight hours prior to the meeting.
- (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, whichever is available, provided that an acknowledgment of service of notice is received for at least one mode of service, and in any event, be served by electronic means in accordance with regulation 12.
- (4) Any decision other than for approval or modification of the repayment plan shall require approval of more than fifty percent of voting share of the creditors.
- (5) A notice under this regulation shall comply with the requirements under regulation 12.

11. First meeting of creditors.

- (1) The meeting of creditors referred to in section 106 shall be the first meeting of creditors.
- (2) The notice under section 107 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, whichever is available, provided that an acknowledgment of service of notice is received for at least one mode of service, and in any event, be served by electronic means in accordance with regulation 11.
- (3) A notice under this regulation shall comply with the requirements under regulation 13.

12. 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.

13. 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, which shall include the following-
 - (a) list of matters to be discussed at the meeting;
 - (b) list of issues to be voted upon at the meeting;
 - (c) relevant documents in relation to the matters to be discussed and issues to be voted upon.
- (2) The notice of the meeting shall provide that a creditor may attend and vote either in person or electronically, or through a proxy in accordance with regulation 17.
- (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.

14. Quorum.

- (1) A meeting of creditors shall be quorate if creditors representing more than thirty three percent of voting rights are present.
- (2) The quorum requirement may be modified through a creditors' resolution, for any future meetings of creditors, but shall not be reduced than the requirement given in sub-regulation (1).
- (3) Where a meeting of creditors 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 is adjourned in accordance with sub-regulation (3), the adjourned meeting shall be quorate with the creditors attending the meeting.

15. Conduct of meeting.

- (1) The resolution professional shall act as the chairperson of the meeting of creditors.
- (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) the capacity in which he is attending;
 - (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 creditors, and are circulated to all participants by electronic means within forty-eight hours of the said meeting.

16. 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 list of creditors within two days of such change.

CHAPTER V

VOTING BY CREDITORS

17. Voting by creditors.

- (1) The resolution professional shall, at the meeting, take a vote of the creditors who are participating in the meeting on any item listed for voting, after discussion on the same.
- (2) The voting share of each creditor shall be determined by the resolution professional based on the debt owed to such creditor.
- (3) The resolution professional may provide each creditor the means to exercise its vote by either electronic means or through electronic voting system in accordance with the provisions of this regulation.

- (4) 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, which shall include 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; and
 - (b) seek a vote on the matters listed for voting in the meeting from the creditors who were not present in the meeting or did not vote at the meeting, by electronic means or through an electronic voting system, where the voting shall be kept open for a minimum of twenty-four hours from the circulation of the minutes as per sub-regulation 3(a).
- (5) At the end of the voting period, the voting portal shall forthwith be blocked.
- (6) Once a vote on a resolution is cast by a creditor, such creditor shall not be allowed to change it subsequently.
- (7) The circulation of minutes relating to matters under sub-regulation 3(b) to all participants of the meeting, shall be made by electronic means within twenty-four hours of the conclusion of the voting.
- (8) In case a meeting of creditors is not summoned, the approval or modification of a repayment plan by creditors shall be an approval or modification within the meaning of section 111 of the code, and the details of such approval or modification shall be recorded in the report under section 106.
- (9) 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 this regulation-

- (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 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.

18. Voting by proxy.

- (1) A creditor who is entitled to vote at a meeting of creditors 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 C.
- (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 creditors.
- (4) The proxy shall be entitled to only 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 17 above, provided that the form appointing a proxy has been delivered to the resolution professional as per sub-regulation (3).

CHAPTER VI

REPAYMENT PLAN

19. 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 duration of the repayment plan, to cover the reasonable expenses of the debtor and his immediate family, provided that at least ten percent of the realizable income of the debtor shall be utilised for repayment of debts under 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 onerous 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
- (l) 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 along with the mode and manner of such sale, 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 creditors under regulation 26;
- (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 creditors.

20. Purchase of assets by certain persons.

- (1) The resolution professional, any professional appointed by the resolution professional, any creditor, [any company where the debtor or creditor is a promoter], or any associate of the debtor, creditor or resolution professional, may purchase or acquire interest in any asset of the debtor, whether directly or indirectly, only with the prior permission of the Adjudicating Authority.
- (2) Any purchase or acquisition made contrary to the provisions of this regulation may be set aside by the Adjudication Authority, and it may make such order as it may deem fit.

Explanation: The term “associate” in this provision will apply mutatis mutandis to the resolution professional and creditor, as under section 79(2) of the code.

21. Non-cooperation by debtor.

In the event the debtor does not cooperate post the first meeting under regulation 10, the resolution professional shall include a statement to this effect in the report prepared under section 112(1).

22. 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, within three days of becoming aware of the breach, issue a notice to the debtor identifying the breach and requiring the debtor within fifteen days of receipt of the notice to-
 - (a) rectify the breach if it is capable of being rectified, or
 - (b) provide an explanation of the breach.
- (2) If, within the period specified under sub-regulation (1), the debtor-
 - (a) rectifies the breach of the repayment plan; or
 - (b) provides an explanation for the breachto the satisfaction of the resolution professional, no further action shall be taken against the debtor, and within seven days from the date of rectification or explanation of the breach, the resolution professional shall report the breach to the creditors.
- (3) If the breach is not rectified or an explanation is not provided by the debtor to the satisfaction of the resolution professional 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).

23. Filing with the Adjudicating Authority.

- (1) The repayment plan as approved by the requisite majority of creditors, along with the report mentioned in section 106 or 112, as the case may be, shall be filed with the Adjudicating Authority on or before completion of 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 creditors, within three days from the date of submission to the Adjudicating Authority.

24. 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

25. 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) call for such evidence or clarification from a creditor as he deems fit for substantiating the whole or part of its claim;
- (e) file information collected with the information utility, if necessary;
- (f) prepare and submit reports as required under the insolvency resolution process;
- (g) appoint a registered valuer for the valuation of the assets of the debtor, if required;

- (h) report any suspicious transactions to the Adjudicating Authority which occurred prior to the insolvency commencement date;
- (i) raise finances for the insolvency resolution process, if necessary; and
- (j) conduct meetings of creditors.

CHAPTER VIII

INSOLVENCY RESOLUTION PROCESS COSTS

26. 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 creditors.
- (2) The applicant shall fix the costs mentioned in sub-regulation (1) (a) and (b).
- (3) The creditors shall approve the costs mentioned in sub-regulation (1) (a), (b) and (c).

27. Miscellaneous.

The details and documents required to be submitted as per section 95(7) shall be as per Form C of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2017.

FORM A

WRITTEN CONSENT TO ACT AS RESOLUTION PROFESSIONAL

(Under regulation 3(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2018)

[Date]

To
The Adjudicating Authority
[Name of Bench]

From
[Name of the Insolvency Professional]
[Registration number of the Insolvency Professional]
[Address of the Insolvency Professional registered with the Board]

Subject: Written consent to act as resolution professional

1. I, [name], an insolvency professional enrolled with [name of insolvency professional agency] and registered with the Board, note that I have been proposed to be appointed as resolution professional for the insolvency resolution process of [name of the debtor].

2. In accordance with regulation 3(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2018, I hereby give consent to the proposed appointment.

3. I declare and affirm as under: -

- (a) I am registered with the Board as an insolvency professional.
- (b) I am not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency.
- (c) I do not suffer from any disability to act as a resolution professional.
- (d) I am eligible to be appointed as resolution professional of the debtor under regulation 3 and other applicable provisions of the Code and regulations.
- (e) I shall make the 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;
- (f) I am having the following processes in hand:

Sl. No.	Role as	No. of Processes on date of Consent
1.	Interim Resolution Professional	
2.	Resolution Professional of: a. Corporate debtors	

	b. Individuals or partnership firms	
3.	Liquidator of: a. Liquidation Process b. Voluntary Liquidation Process	
4.	Bankruptcy Trustee	
5.	Authorised Representatives	
6.	Any other (please state)	

Date:
Place:

(Signature of Insolvency Professional)
Registration No.....

FORM B

CLAIM WITH PROOF BY A CREDITOR

(Under regulation 5 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2018)

[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 claim with proof.

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	Aadhaar number	PAN	CIN	GSTIN
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				
6.	Details of any dispute, as well as the record of such dispute with respect to claim				

PARTICULARS		
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.	If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will determine the voting share as per section 110 of the code	<input type="checkbox"/> I agree to forfeit my right to enforce my security <i>[insert description]</i> during the period of the repayment plan. <input type="checkbox"/> I do not agree to forfeit my right to enforce my security <i>[insert description]</i> during the period of the repayment plan.
13.	List of documents attached to this proof of claim in order to prove the existence and non-payment of claim due to the creditor	
14.	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		

PARTICULARS

[Please enclose the authorisation document if this form is being submitted on behalf of a creditor]

Name in block letters

Address of person signing

DECLARATION

I, *[name of claimant]*, currently residing at *[insert address]*, hereby declare 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.]

Date:

Place:

(Signature of the claimant)

VERIFICATION

I, *[Name of claimant]* the claimant hereinabove, do hereby verify that the contents of this proof of claim 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__

(Signature of the claimant)

FORM C

PROXY FORM

(Under regulation 18 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2018)

Full name of the debtor-

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

Full name of creditor				
Address	Present	Permanent	Business	
Identification number	Aadhaar number	PAN	CIN	GSTIN
E-mail id				

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

1.	Full name				
	Address	Present	Permanent	Business	
	Identification number	Aadhaar number	PAN	CIN	GSTIN
	E-mail id				
Signature					

or failing him;

2.	Full name			
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	Address	Present	Permanent	Business	
	Identification number	Aadhaar number	PAN	CIN	GSTIN
	E-mail id				
Signature					

as my proxy to attend and vote for me and on my behalf at the meeting 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):