



# **CREATE & GROW**

## **RESEARCH FOUNDATION**

**“ ONE - DAY CONFERENCE FOR BANKERS, COC MEMBERS IN CHENNAI ”**

**4<sup>th</sup> JAN, 2020**

**“IBC Provisions on Personal Guarantors to Corporate Debtors, How are they  
useful to Corporate Lenders?”**

**“ BOOKLET ”**

**Website: [www.createandgrowresearch.org](http://www.createandgrowresearch.org)**

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4<sup>th</sup> January 2020

## **Personal Guarantees in the context of corporate lending – What RBI has said in 2015?**

### **Preamble:**

The concept of obtaining guarantees came in as a form of risk mitigation by the lenders. There is no doubt, proper appraisal of a project could alleviate major risks during the project implementation and commercial operations. However, in the fast-changing global economic scenario today, everything is dynamic and there is no certainty of anything. How the lenders protect themselves in such a scenario is crucial.

Reserve Bank of India, in 2015, issued a set of guidelines relating to obtaining personal guarantees. The contents of this circular, relevant even now, are reproduced for the benefit of the readers.

The opening paragraph of this Master Circular sets the tone for personal guarantees:

**“Banks should take personal guarantees of directors for the credit facilities, etc. granted to corporates, public or private, only when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course. In order to identify the circumstances under which the guarantee may or may not be considered necessary, banks should be guided by the following broad considerations:”**

While the lenders have every right to seek and obtain personal guarantees, there has to be some rationale in obtaining such guarantees. All the more, while enforcing a personal guarantee, against the default of the corporate borrower, the lenders are expected to exercise discretion lest such steps could lead to fear factor taking over the entrepreneurial spirit.

We restrict ourselves to the above views. Have a good reading !!!

### **“Relevant portion from the Master circular dated 1<sup>st</sup> July 2015 issued by RBI**

#### **on Personal Guarantees and Co-acceptances**

#### **2.2.9 Guidelines relating to obtaining of personal guarantees of directors and other managerial personnel of borrowing concerns**

##### **2.2.9.1 Personal guarantees of directors**

Banks should take personal guarantees of directors for the credit facilities, etc. granted to corporates, public or private, only when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course. In order to identify the circumstances under which the guarantee

may or may not be considered necessary, banks should be guided by the following broad considerations:

**A. Where guarantees need not be considered necessary**

i. Ordinarily, in the case of public limited companies, when the lending institutions are satisfied about the management, its stake in the concern, economic viability of the proposal and the financial position and capacity for cash generation, no personal guarantee need be insisted upon. In fact, in the case of widely owned public limited companies, which may be rated as first class and satisfying the above conditions, guarantees may not be necessary even if the advances are unsecured. Also, in the case of companies, whether private or public, which are under professional management, guarantees may not be insisted upon from persons who are connected with the management solely by virtue of their professional/technical qualifications and not consequent upon any significant shareholding in the company concerned.

ii. Where the lending institutions are not so convinced about the aspects of loan proposals mentioned above, they should seek to stipulate conditions to make the proposals acceptable without such guarantees. In some cases, more stringent forms of financial discipline like restrictions on distribution of dividends, further expansion, aggregate borrowings, creation of further charge on assets and stipulation of maintenance of minimum net working capital may be necessary. Also, the parity between owned funds and capital investment and the overall debt-equity ratio may have to be taken into account.

**B. Where guarantees may be considered helpful**

i. Personal guarantees of directors may be helpful in respect of companies, whether private or public, where shares are held closely by a person or connected persons or a group (not being professionals or Government), irrespective of other factors, such as financial condition, security available, etc. The exception being in respect of companies where, by court or statutory order, the management of the company is vested in a person or persons, whether called directors or by any other name, who are not required to be elected by the shareholders. Where personal guarantee is considered necessary, the guarantee should preferably be that of the principal members of the group holding shares in the borrowing company rather than that of the director/managerial personnel functioning as director or in any managerial capacity.

ii. Even if a company is not closely held, there may be justification for a personal guarantee of directors to ensure continuity of management. Thus, a lending institution could make a loan to a company whose management is considered good. Subsequently, a different group could acquire control of the company, which could lead the lending institution to have well-founded fears that the management has changed for the worse and that the funds lent to the company are in jeopardy. One way by which lending institutions could protect themselves in such circumstances is to obtain guarantees of the directors and thus ensure either the continuity of the management or that the changes in management take place with their knowledge. Even where personal guarantees are waived, it may be necessary to obtain an undertaking from the borrowing company that no change in the management would be made without the consent of the lending institution. Similarly, during the formative stages of a company, it may be in the interest of the company, as well as the lending institution, to obtain guarantees to ensure continuity of management.

iii. Personal guarantees of directors may be helpful with regard to public limited companies other than those which may be rated as first class, where the advance is on an unsecured basis.

iv. There may be public limited companies, whose financial position and/or capacity for cash generation is not satisfactory even though the relevant advances are secured. In such cases, personal guarantees are useful.

v. Cases where there is likely to be considerable delay in the creation of a charge on assets, guarantee may be taken, where deemed necessary, to cover the interim period between the disbursement of loan and the creation of the charge on assets.

vi. The guarantee of parent companies may be obtained in the case of subsidiaries whose own financial condition is not considered satisfactory.

vii. Personal guarantees are relevant where the balance sheet or financial statement of a company discloses interlocking of funds between the company and other concerns owned or managed by a group.

### **C. Worth of the guarantors, payment of guarantee commission, etc**

Where personal guarantees of directors are warranted, they should bear reasonable proportion to the estimated worth of the person. The system of obtaining guarantees should not be used by the directors and other managerial personnel as a source of income from the company. Banks should obtain an undertaking from the borrowing company as well as the guarantors that no consideration whether by way of commission, brokerage fees or any other form, would be paid by the former or received by the latter, directly or indirectly. This requirement should be incorporated in the bank's terms and conditions for sanctioning of credit limits. During the periodic inspections, the bank's inspectors should verify that this stipulation has been complied with. There may, however, be exceptional cases where payment of remuneration may be permitted e.g. where assisted concerns are not doing well and the existing guarantors are no longer connected with the management but continuance of their guarantees is considered essential because the new management's guarantee is either not available or is found inadequate and payment of remuneration to guarantors by way of guarantee commission is allowed.

### **D. Personal guarantees in the case of sick units**

As the personal guarantees of promoters/ directors generally instill greater accountability and responsibility on their part and prompt the managements to conduct the running of the assisted units on sound and healthy lines and to ensure financial discipline, banks, may in their discretion, obtain guarantees from directors (excluding the nominee directors) and other managerial personnel in their individual capacities. In case, for any reasons, a guarantee is not considered expedient by the bank at the time of sanctioning the advance, an undertaking should be obtained from the individual directors and a covenant should invariably be incorporated in the loan agreement that in case the borrowing unit show cash losses or adverse current ratio or diversion of fund, the directors would be under an obligation to execute guarantees in their individual capacities, if required by the bank. Banks may also obtain guarantees at their discretion from the parent/holding company when credit facilities are extended to borrowing units in the same Group."

**For any clarifications, please contact at the following telephone numbers / email.**

**MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION**

New Delhi, the 15th November, 2019

**S.O. 4126(E).**—In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the 1st day of December, 2019 as the date on which the following provisions of the said Code only in so far as they relate to personal guarantors to corporate debtors, shall come into force:—

- (1) clause (e) of section 2;
- (2) section 78 (except with regard to fresh start process) and section 79;
- (3) sections 94 to 187 [both inclusive];
- (4) clause (g) to clause (i) of sub-section (2) of section 239;
- (5) clause (m) to clause (zc) of sub-section (2) of section 239;
- (6) clause (zn) to clause (zs) of sub-section (2) of section 240; and
- (7) section 249.

[F. No. 30/21/2018-Insolvency Section]

GYANESHWAR KUMAR SINGH, Jt. Secy.

1	पूरा नाम				
	पता	वर्तमान	स्थायी	कारबार	
	पहचान संख्यांक	आधार सं.	पैन	सी.आई.एन.	जी.एस.टी.आई.एन.
	ईमेल				
	हस्ताक्षर				

या उसके न हो सकने पर;

2	पूरा नाम				
	पता	वर्तमान	स्थायी	कारबार	
	पहचान संख्यांक	आधार सं.	पैन	सी.आई.एन.	जी.एस.टी.आई.एन.
	ईमेल				
	हस्ताक्षर				

लेनदारों की (बैठक की तारीख और समय अंतःस्थापित करें) को... (बैठक का स्थान अंतःस्थापित करें) पर होने वाली बैठक में और उसके किसी स्थगन में मेरी ओर से उपस्थित होने और नीचे यथा-सूचीबद्ध बैठक की सूचना में उपदर्शित विषयों की बाबत (सूचना के व्यौरे दें) मेरी ओर से मतदान करने के लिए अपने प्रॉक्सी के रूप में नियुक्त करता हूँ -

(कार्यसूची में सूचीबद्ध विषय अंतःस्थापित करें)

----- (तारीख, मास और वर्ष अंतःस्थापित करें) को इस पर हस्ताक्षर किए।

लेनदार के हस्ताक्षर

प्रॉक्सी के हस्ताक्षर।

डा. एम. एस. साहू, अध्यक्ष

[विज्ञापन III/4/असा./300/19]

## INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

### NOTIFICATION

New Delhi, the 20th November, 2019

### INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS) REGULATIONS, 2019

**No. IBBI/2019-20/GN/REG050.**—In exercise of the powers conferred by clause (t) of sub-section (1) of section 196, sub-section (1) and clauses (zn), (zo), (zp) and (zq) of sub-section (2) of section 240 read with clause (e) of section 2 and 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, 2019.

(2) They shall come into force from the 1<sup>st</sup> day of December, 2019.

##### 2. Application.

These regulations shall apply to insolvency resolution process for personal guarantors to corporate debtors.

### 3. Definitions.

In these regulations, unless the context otherwise requires, -

- (a) “associate” in relation to a creditor, a resolution professional or professionals engaged by resolution professional, as the case may be, shall have the same meaning as assigned to it in relation to a debtor in sub-section (2) of section 79;
- (b) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
- (c) “corporate debtor” means a corporate person for whom the guarantor has given a personal guarantee;
- (d) “electronic means” means an authorised 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) “form” means a form appended to these regulations;
- (f) “participant” means a person entitled to attend a meeting of creditors and includes a creditor, the guarantor, the resolution professional, and any other person authorised through a resolution by creditors to attend such meeting;
- (g) “resolution process” means the insolvency resolution process of a guarantor;
- (h) “resolution process commencement date” means the date of admission of an application under section 100;
- (i) “resolution process costs” shall mean-
  - (i) fees payable to the resolution professional;
  - (ii) expenses incurred on and by the resolution professional for carrying out the resolution process, including the fee of professionals engaged, if any;
  - (iii) finances raised for the resolution process, and costs incurred in raising such finances; and
  - (iv) such other costs directly relatable to the resolution process,
 to the extent approved or ratified by the creditors;
- (j) “section” means section of the Code;
- (k) words and expressions used and not defined in these regulations but defined in the Code and the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 shall have the respective meanings assigned to them in the Code and the said rules.

## CHAPTER II

### GENERAL

#### 4. Eligibility of resolution professional.

- (1) An insolvency professional shall be eligible to be appointed as a resolution professional for a resolution process, if-
  - (a) he, the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;
  - (b) he is not subject to any ongoing disciplinary proceeding or a restraint order of the Board or of the insolvency professional agency of which he is a professional member; and
  - (c) the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the resolution process.

*Explanation.-* For the purposes of this sub-regulation, -

- (i) a person shall be considered independent of the guarantor, if he-
  - (a) is not an associate of the guarantor;
  - (b) is not a related party of the corporate debtor; and
  - (c) has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor;
- (ii) the expression “related party” shall have the meaning assigned to it in sub-section (24) of section 5.



(2) An insolvency professional, other than who has filed an application under section 94 or 95 on behalf of a guarantor or a creditor, as the case may be, shall provide a written consent in Form A to the Adjudicating Authority before his appointment as resolution professional in a resolution process.

#### **5. Preservation of records.**

The resolution professional shall preserve a physical as well as an electronic copy of the records relating to resolution process of the guarantor as per the record retention schedule, as may be communicated by the Board in consultation with insolvency professional agencies.

#### **6. Debt counselling.**

Debt counselling in relation to resolution process may be provided to a guarantor by such person as may be recognised by the Board or the Central Government, as the case may be.

### **CHAPTER III**

### **REGISTRATION OF CLAIMS**

#### **7. Submission and verification of claim.**

(1) A creditor shall submit its claim along with proof to the resolution professional in Form B, on or before the last date mentioned in the public notice issued under sub-section (1) of section 102.

(2) The creditor shall bear the costs relating to submission of the claim, including proof, under these regulations.

(3) A creditor may prove its claim on the basis of-

- (a) records available in an information utility, or
- (b) any other documentary evidence which substantiates the existence of claim.

(4) The resolution professional may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

(5) The resolution professional shall verify each claim as soon as it is received and prepare a list of creditors under sub-section (1) of section 104 within thirty days from the date of public notice.

(6) 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.

(7) The resolution professional shall modify the amounts of claims admitted, including the estimates of claims made under sub-regulation (6), as soon as may be practicable, after he comes across additional information warranting such revision, till the approval of a repayment plan by the creditors.

(8) The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the resolution process commencement date.

*Explanation.*— For the purposes of this sub-regulation, “official exchange rate” means the reference rate published by the Reserve Bank of India or derived from such reference rate.

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

(1) Where a creditor assigns or transfers the debt to any person during the resolution process period, both parties shall provide the resolution professional the terms of such assignment or transfer, and the identity and details of the assignee or transferee.

(2) The resolution professional shall notify each creditor and the Adjudicating Authority of any resultant change in the list of creditors within two days of such change.

#### **9. List of creditors.**

(1) The list of creditors under sub-section (1) of section 104 shall contain the names of creditors, amount claimed, amount admitted and security interest, if any, in respect of such claims.

(2) The resolution professional shall -

- (a) make the list of creditors available for inspection by the persons who submitted claims with proof;
- (b) serve a copy of the list of creditors to the guarantor;

- (c) make available the list of creditors on the website, if any, of the guarantor;
- (d) present the list of creditors at the meeting of creditors; and
- (e) file a certified copy of the list of creditors with the Adjudicating Authority along with the repayment plan.

#### **10. Statement of affairs.**

- (1) The resolution professional shall prepare a statement of affairs of the guarantor for the purposes of clause (b) of sub-section (3) of section 107.
- (2) The statement of affairs shall include the following information of the guarantor -
  - (a) assets and liabilities for the preceding three financial years and the current financial year;
  - (b) details of the excluded assets and excluded debts;
  - (c) income statement for the preceding three financial years and the current financial year;
  - (d) income-tax returns filed by the guarantor, if any, for the preceding three financial years;
  - (e) creditor wise amount due, broken up into secured and unsecured debts for the preceding three financial years;
  - (f) details of debt owed by guarantor to his associates for the preceding three financial years;
  - (g) guarantees given in relation to any of his debts, and whether any of the guarantors is an associate of the guarantor; and
  - (h) details of the financial statements for the business owned by the guarantor, or of the firm in which he is a partner, as the case may be, for the preceding three financial years, if applicable.

### **CHAPTER IV**

#### **MEETINGS OF CREDITORS AND VOTING**

#### **11. Meeting of creditors.**

- (1) A creditor, who is included in the list of creditors, shall be entitled to participate in the meetings of creditors.
- (2) The voting share of each creditor shall be in proportion to the debt owed to such creditor.
- (3) The resolution professional shall convene the first meeting of creditors in accordance with sub-section (1) of section 107 and shall convene the meeting, by giving such notice to the other participants as decided by the creditors, which shall not less than forty-eight hours.
- (4) The resolution professional shall convene a meeting of creditors on a request by creditors having thirty-three percent of voting share of creditors.
- (5) The notice under this regulation shall be served on every participant at the address provided to the resolution professional in accordance with regulation 12.
- (6) Unless otherwise provided in the Code, any decision of the creditors shall require approval of more than fifty percent of voting share of the creditors who voted.

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

- (1) The notice convening the meeting of creditors shall inform the participants of the venue, the time, the date of the meeting and of the options available to -
  - (i) participants to attend the meeting either in person, through video conferencing, or through a proxy; and
  - (ii) creditors to cast vote in person, through a proxy, by electronic means, or by electronic proxy, as the case may be.
- (2) The notice of the meeting shall carry the agenda, which shall include the following-
  - (a) list of matters to be discussed;
  - (b) list of issues to be voted upon;
  - (c) relevant documents in relation to the matters to be discussed and issues to be voted upon.
- (3) If an option to attend the meeting through video conferencing is made available to the participants, the notice of the meeting shall -

- (a) state the process and the manner for attending the meeting;
- (b) provide the login ID and the details of a facility for generating password for access to the meeting in a secure manner; and
- (c) provide contact details of the person who shall address the queries connected with the video conferencing.
- (4) If an option to cast vote by electronic means is made available to the creditors, the notice of the meeting shall -
  - (a) state the process and the manner of casting vote by such means;
  - (b) provide the login ID and the details of a facility for generating password for access to the electronic means for casting vote in a secure manner; and
  - (c) provide contact details of the person who shall address the queries connected with the electronic means.

### 13. Quorum.

(1) A meeting of creditors shall be quorate if creditors representing at least thirty-three percent of voting share are present in person, by proxy or through video conferencing:

Provided that the creditors in a meeting may modify the percentage of voting share required for quorum in respect of any future meetings of the creditors.

(2) 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 and on that day, no quorum shall be required.

### 14. Conduct of meeting.

- (1) The resolution professional shall preside over 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 by proxy or through video conferencing, shall state, for the record, the following -
  - (a) his name;
  - (b) the capacity in which he is attending;
  - (c) the creditor he is representing, if applicable; 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 meeting, without the permission of the resolution professional.

### 15. Voting by creditors.

- (1) The resolution professional shall take a vote of the creditors present in the meeting on any item listed for voting after discussion on the same.
- (2) At the conclusion of the meeting, the resolution professional shall prepare minutes of the meeting, including the names of creditors, who voted for, against or abstained from voting on the items put to vote in the meeting.
- (3) The resolution professional shall-
  - (a) circulate the minutes of the meeting by electronic means to all participants of the meeting within forty-eight hours of the conclusion of the meeting, and
  - (b) seek a vote on the items 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, where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes as per clause (a).

(4) At the end of the voting period, the resolution professional shall record the decision arrived at on the items along with the names of creditors who voted for, against or abstained from voting on the items, after considering the voting at the meeting and through the electronic means.

(5) The resolution professional shall circulate a copy of the record made under sub-regulation (4) to all participants within twenty-four hours of the conclusion of the voting.

**16. Voting by proxy.**

(1) A creditor, who is entitled to vote at a meeting of creditors, shall be entitled to appoint an individual, who shall not be an associate of the guarantor, as a proxy to attend and vote on its behalf.

(2) For the purpose of sub-regulation (1), a creditor shall deliver Form C, duly completed to the resolution professional at least twenty-four hours prior to the meeting of creditors.

(3) A proxy may vote by electronic means on behalf of the creditor.

**CHAPTER V**  
**REPAYMENT PLAN**

**17. Contents of repayment plan.**

(1) The repayment plan shall provide the following -

- (a) the term of the repayment plan and its implementation schedule, including the amounts to be repaid and dates of repayment to creditors;
- (b) the source of funds that will be used to pay resolution process costs and that such payment shall be made in priority over any creditor;
- (c) a minimum budget for the duration of the repayment plan, to cover the reasonable expenses of the guarantor and members of his immediate family to the extent they are dependent on him, provided that at least ten percent of the realisable income of the guarantor shall be utilised for repayment of debts;
- (d) financing required for implementation of the repayment plan;
- (e) if the guarantor 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, invested or otherwise dealt with, pending repayment to creditors;
- (g) the functions which are to be undertaken by the resolution professional, including supervision and implementation of the repayment plan;
- (h) variation of onerous terms of a contract or transaction involving the guarantor;
- (i) the details of excluded assets and excluded debts of the guarantor; and
- (j) terms and conditions for the discharge of the guarantor.

(2) The repayment plan may provide for the following-

- (a) transfer or sale of all or part of the assets of the guarantor along with the mode and manner of such sale;
- (b) administration or disposal of any funds of the guarantor;
- (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 guarantor;
- (f) modification in the terms of repayment of any debt due from the guarantor;
- (g) part of the income of the guarantor to be used for the repayment of the debt, and the manner of calculating the income of the guarantor;
- (h) the manner in which funds held for the purpose of repayment to creditors, and not so repaid at the end of the repayment plan, are to be dealt with; and

(i) such other matters as may be required by the creditors.

**18. Purchase of assets by certain persons.**

(1) The following persons shall not purchase or acquire any interest in the property of guarantor, directly or indirectly, without permission of the Adjudicating Authority –

- (a) the resolution professional or any partner or director of the insolvency professional entity of which the resolution professional is a partner or director;
- (b) any professional appointed by the resolution professional for the resolution process;
- (c) any creditor;
- (d) any company where the guarantor or a creditor is a promoter or director;
- (e) any associate of the guarantor, creditor or resolution professional.

(2) The Adjudication Authority may set aside purchase or acquisition made contrary to the provisions of this regulation and may make such order as it may deem fit.

**19. Filing with the Adjudicating Authority.**

(1) The resolution professional shall file the repayment plan, as approved by the creditors, along with the report mentioned in sections 106 or 112, as the case may be, with the Adjudicating Authority on or before completion of one hundred and twenty days from the resolution process commencement date.

(2) The resolution professional shall provide the copies of the documents filed with the Adjudicating Authority under sub-regulation (1) to the guarantor and the creditors, within three days from the date of such filing.

**20. Breach of repayment plan by the guarantor.**

(1) If in the opinion of the resolution professional, the guarantor has failed in implementation of the repayment plan, the resolution professional shall, within three days of knowledge of such failure, issue a notice to the guarantor identifying the failure and requiring him, within fifteen days of receipt of the notice, to-

- (a) address such failure if it can be addressed, or
- (b) provide an explanation for the failure.

(2) If the guarantor, within the period specified under sub-regulation (1), -

- (a) addresses the failure in implementation of the repayment plan; or
- (b) provides a satisfactory explanation for such failure,

the resolution professional shall report the failure to creditors within seven days of the date of failure addressed or explanation provided for such failure.

(3) In cases not covered under sub-regulation (2), the resolution professional may apply to the Adjudicating Authority under sub-section (2) of section 116 for directions, if he is of the opinion that the failure will affect the implementation of the repayment plan.

**21. Application for discharge order.**

(1) The resolution professional shall, for the purpose of discharge order, file an application along with copies of the notice and report under section 117 to the Adjudicating Authority under section 119.

(2) On consideration of the notice and the report under sub-section (1) of section 117, the Adjudicating Authority may pass the discharge order.

**22. Non-cooperation by guarantor.**

In the event of non-cooperation of the guarantor at any time during the resolution process period or during the implementation of the repayment plan, the resolution professional shall prepare a statement to this effect and file the same with the Adjudicating Authority for appropriate directions.

**FORM A****WRITTEN CONSENT TO ACT AS RESOLUTION PROFESSIONAL**

*(Under regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)*

[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 in the matter of [name of guarantor].**

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 resolution process of [name of the guarantor].

2. In accordance with regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, I hereby give consent to the proposed appointment for the resolution process of [name of the guarantor]

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 guarantor under regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 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 the date of consent
1	Interim Resolution Professional	
2	Resolution Professional of: a. Corporate debtors b. Personal guarantors, individuals or partnership firms	
3	Liquidator of: a. Liquidation Process b. Voluntary Liquidation Process	
4	Bankruptcy Trustee	
5	Authorised Representative	
6	Any other ( <i>please state</i> )	

Date:

Place:

(Signature of Insolvency Professional)

Registration No.....

**FORM B****CLAIM WITH PROOF BY A CREDITOR**

*(Under regulation 7(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)*

[Date]

To

[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 in the matter of [name of guarantor].

Madam/Sir,

[Name of the creditor], hereby submits the claim with proof in respect of the resolution process of [name of guarantor].  
The details for the same are set out below:

1.	Title and full name of creditor				
2.	Identification number of creditor	Aadhaar Number	PAN	CIN	GSTIN
3.	Address	Present	Permanent	Business	
4.	Email				
5.	Total amount of claim (Including any interest as on the resolution process commencement date)				
6.	Details of documents by reference to which the debt is substantiated				
7.	Details of any dispute, as well as the record of such dispute with respect to claim (if any)				
8.	Details of how debt was incurred and the date when such debt was incurred				
9.	Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor, which may be set-off against the claim				
10.	Details of any retention of title arrangements in respect of goods or properties to which the claim refers				

11.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a repayment plan (Account Number, IFS Code, Branch and Bank)	
12.	Details of any security held (including value and date when it was given)	
13.	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.
14.	(i) Amount claimed by me in the corporate insolvency resolution process / liquidation process of the corporate debtor  (ii) The amount admitted by the resolution professional / liquidator of said process  (iii) Amount realised by me in the said process, if any	
15.	Following information regarding the guarantor (to the extent known)- Assets of the guarantor Business of the guarantor Firms in which guarantor is a partner Bank account details of the guarantor Name, age and address of spouse, children, parents and siblings of the guarantor	
Signature of creditor or person authorised to act on his behalf		
<i>[Please enclose the authorisation document if this form is being submitted on behalf of a creditor]</i>		
Name in block letters		
Address of person signing		

**DECLARATION**

I, *[name of creditor]*, currently residing at *[insert address]*, hereby declare and state as follows:-

- [Name of guarantor]*, the *guarantor* was, at the resolution process commencement date, being the *[date]* of *[year]*, indebted to me to the sum of Rs. *[insert amount of claim]*.
- In respect of my claim of the said sum or any part thereof, I have relied on the following documents:
  - 
  - 
  - 
  - 
  - 
  -



3. The aforesaid 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 guarantor and the creditor which may be set-off against the claim.]*

Date:

Place:

(Signature of the creditor)

#### VERIFICATION

I, *[Name of creditor]* the creditor 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 \_\_\_\_\_ 20\_\_

(Signature of the creditor)

#### FORM C

##### PROXY FORM

*(Under regulation 16(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)*

Full name of the guarantor -

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

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

I being *[insert name of creditor]* holding *[insert % of voting share]* in the debt of the guarantor, hereby appoint-

1.	Full name				
	Address	Present	Permanent		Business
	Identification Number	Aadhaar Number	PAN	CIN	GSTIN

	E-mail	
	Signature	

or failing him;

2.	Full name				
	Address	Present	Permanent	Business	
	Identification Number	Aadhaar Number	PAN	CIN	GSTIN
	E-mail				
	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: .

Dr. M. S. SAHOO, Chairperson

[ADVT.-III/4/Exty./300/19]

**प्ररूप घ**

[नियम 11(2) देखें]

**दिवाला समाधान प्रक्रिया को वापस लेने संबंधी आवेदन**

[दिवाला और शोधन अक्षमता (निगमित ऋणी) के लिए व्यक्तिगत प्रत्याभूतिदाताओं हेतु दिवाला समाधान प्रक्रिया के लिए न्यायनिर्णयन प्राधिकारी को आवेदन) नियम, 2019 के नियम 11(2) के अधीन]

[तारीख]

सेवा में,

न्याय-निर्णयन प्राधिकारी

[पता]

प्रेषक

[आवेदन का नाम और पता]

[प्रत्याभूतिदाता का नाम] के मामले में

**विषय: दिवाला समाधान प्रक्रिया आवेदन (प्रत्याभूतिदाता का नाम) वापस लेने हेतु \_\_\_\_\_ को स्वीकृति दी गई**

1. [आवेदक का नाम] ने इस संहिता की [धारा 94/धारा 95] के अधीन न्यायनिर्णयन प्राधिकरण के समक्ष एक आवेदन [आवेदन का विवरण अर्थात् डायरी संख्या/मामला संख्या] तारीख [फाइलिंग की तारीख] को फाइल किया था। उक्त आवेदन [मामला संख्या] [तारीख] को न्यायनिर्णयन प्राधिकरण द्वारा स्वीकार किया गया था।
2. मैं इस संहिता की [धारा 94/धारा 95] के अधीन न्यायनिर्णयन प्राधिकरण के समक्ष [आवेदक का नाम] द्वारा दाखिल [आवेदन का विवरण अर्थात् डायरी संख्या/मामला संख्या] आवेदन वापस लेता हूँ।
3. लेनदारों में नियम 11 के अधीन इस आवेदन की वापसी के लिए अनुरोध को अनुमोदित कर दिया है।
4. मुझे आवेदक द्वारा न्यायनिर्णयन प्राधिकरण से इस आवेदन को वापस लेने हेतु फाइल करने के लिए प्राधिकृत किया गया है। [यदि लागू नहीं है, तो हटा दें]
5. समाधान वृत्तिक द्वारा इस प्रक्रिया में किए जाने वाले प्राक्कलित लागत के लिए अपेक्षित बैंक प्रत्याभूति संलग्न है।

(आवेदक या आवेदक द्वारा प्राधिकृत व्यक्ति के हस्ताक्षर)

तारीख:

स्थान:

[फा. सं. 30/21/2018-दिवाला अनुभाग]

ज्ञानेश्वर कुमार सिंह, संयुक्त सचिव

**MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION**

New Delhi, the 15th November, 2019

**G.S.R. 854(E).**—In exercise of the powers conferred by sub-section (1), clauses (g), (h), (i), (m), (n) and (o) of sub-section (2) of section 239 read with clause (e) of section 2 and sub-section (2), clauses (c) and (e) of sub-section (14) and clause (e) of sub-section (15) of section 79 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, 2019.

(2) They shall come into force from the 1<sup>st</sup> day of December, 2019.

2. **Application.**— These rules shall apply to insolvency resolution process for personal guarantors to corporate debtors.
3. **Definitions.** — (1) In these rules, unless the context otherwise requires, -
  - (a) “Adjudicating Authority” means-
    - (i) for the purpose of section 60, the National Company Law Tribunal constituted under section 408 of the Companies Act, 2013 (18 of 2013); or
    - (ii) in cases other than sub-clause (i), the Debt Recovery Tribunal established under sub-section (1A) of section 3 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993);
  - (b) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
  - (c) “electronic form” shall have the meaning assigned to it in clause (r) of section 2 of the Information Technology Act, 2000 (21 of 2000);
  - (d) “form” means a form appended to these rules;
  - (e) “guarantor” means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part;
  - (f) “section” means section of the Code;
  - (g) “serve” means sending any communication by any means, including registered post, speed post, courier or electronic form, which is capable of producing or generating an acknowledgement of receipt of such communication:
 

Provided that where a document cannot be served in any of the modes, it shall be affixed at the outer door or some other conspicuous part of the house or building in which the addressee ordinarily resides or carries on business or personally works for gain;

(2) Words and expressions used and not defined in these rules but defined in the Code shall have the meanings respectively assigned to them in the Code.
4. **Relatives.**— For the purposes of clause (ii) of Explanation to sub-section (2) of section 79, the manner of relationship shall mean the manner as provided in the Explanation to clause (24A) of section 5.
5. **Excluded assets.**— For the purposes of sub-section (14) of section 79,—
  - (a) the value of unencumbered personal ornaments under clause (c) of the said sub-section shall not exceed one lakh rupees;
  - (b) the value of unencumbered single dwelling unit owned by the debtor under clause (e) of the said sub-section shall not exceed,—
    - (i) in the case of dwelling unit in an urban area, twenty lakh rupees;
    - (ii) in the case of dwelling unit in rural area, ten lakh rupees.

*Explanation.*— For the purposes of this rule,—

  - (a) “rural area” shall have the same meaning as assigned to it in clause (o) of section 2 of the National Rural Employment Guarantee Act, 2005 (42 of 2005);
  - (b) “urban area” means any area other than rural area.
6. **Application by guarantor.**— (1) The application under sub-section (1) of section 94 shall be submitted in Form A, along with an application fee of two thousand rupees.
 

(2) The guarantor shall serve forthwith a copy of the application referred to in sub-rule (1) to every financial creditor and the corporate debtor for whom the guarantor is a personal guarantor.
7. **Application by creditor.**— (1) A demand notice under clause (b) of sub-section (4) of section 95 shall be served on the guarantor demanding payment of the amount of default, in Form B.
 

(2) The application under sub-section (1) of section 95 shall be submitted in Form C, along with a fee of two thousand rupees.

- (3) The creditor shall serve forthwith a copy of the application referred to in sub-rule (2) to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor.
- (4) In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.
- 8. Confirmation or nomination of insolvency professional.—** (1) For the purposes of sub-section (2) of section 97 and sub-section (5) of section 98, the Board may share the database of the insolvency professionals, including information about disciplinary proceedings against them, with the Adjudicating Authority from time to time.
- (2) For the purposes of sub-section (4) of section 97 and sub-section (3) of section 98, the Board may share a panel of insolvency professionals, who may be appointed as resolution professionals, with the Adjudicating Authority.
- 9. Copy of application.—** The applicant shall provide a copy of the application filed under sub-section (1) of section 94 or sub-section (1) of section 95, as the case may be, if not provided earlier, to the resolution professional within three days of his appointment under sub-section (5) of section 97, and to the Board for its record.
- 10. Filing of application and documents.—** (1) Till such time, rules of procedure for conduct of proceedings under the Code are notified, the applications under rules 6 and 7 shall be filed and dealt with by the Adjudicating Authority in accordance with —
- (a) rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 made under section 469 of the Companies Act, 2013 (18 of 2013); or
- (b) rule 3 of the Debt Recovery Tribunal (Procedure) Rules, 1993 made under section 36 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) and regulations 3, 4, 5 and 11 of the Debt Recovery Tribunal Regulations, 2015 made under section 22 of the Recovery of Debts and Bankruptcy Act, 1993,
- as the case may be.
- (2) The application and accompanying documents shall be filed in electronic form, as and when such facility is made available and as directed by the Adjudicating Authority:
- Provided that till such facility is made available, the applicant may submit accompanying documents, and wherever they are bulky, in electronic form, in scanned, legible portable document format in a data storage device such as compact disc or a USB flash drive acceptable to the Adjudicating Authority.
- 11. Withdrawal of application. —** (1) The Adjudicating Authority may permit withdrawal of the application submitted under rule 6 or rule 7, as the case may be,—
- (a) before its admission, on a request made by the applicant;
- (b) after its admission, on the request made by the applicant, if ninety per cent. of the creditors agree to such withdrawal.
- (2) An application for withdrawal under clause (b) of sub-rule (1) shall be in Form D.

### FORM A

[See rule 6(1)]

#### APPLICATION BY GUARANTOR 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, 2019]*

[Date]

To

The Adjudicating Authority

[Address]

From

[Name and address of the guarantor]

In the matter of [name of the guarantor]

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

Madam/Sir,

I/We hereby submit this application to initiate an insolvency resolution process in respect of [name of guarantor]. The details for the purpose of this application are set out below-

**Part-I**

PARTICULARS OF THE GUARANTOR					
1.	Title and full name				
2.	Date of birth and e-mail address				
3.	Any other name, if any, by which the guarantor is or has been known				
4.	Address: (i) Present (ii) Permanent (iii) Business				
5.	Occupation/ Business/ Profession				
6.	Annual income in the preceding financial year (in Rs.)				
7.	List of associates of the guarantor, including relatives, who are its 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 No.(s)	Home	Mobile	Business	
11.	List of assets of guarantor and immediate family as on the application date. <b>Note:</b> This will include all assets of guarantor, 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			
		Jewellery			
		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 preceding years (along with name of company in which directorship is held) and CIN of such companies				
13.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify if any other)				
14.	Details regarding guarantee(s) given by guarantor (in addition to information in serial numbers 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				
	Whether the guarantee has been invoked and proof thereof.				
15.	Where the guarantor is not a resident in India, the name and address of the person authorised to accept the service of process on guarantor'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]*

<b>BUSINESS PARTICULARS OF GUARANTOR</b>		
1.	Name of business and form of business	
2.	Details of registration, if any	
3.	Description of business	
4.	Business address	
5.	Annual income of guarantor	
6.	If business organisation is a firm, mention the details 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**

<b>PARTICULARS OF DEBT [CREDITOR WISE, AS APPLICABLE]</b>			
1.	Name(s) of creditor(s)		
2.	Address	Present	Permanent Business
3.	Total debt (including any interest or penalties)		
4.	Amount of debt in default		
5.	Interest or penalties, if any		
6.	Date when the debt was due		
7.	Date when the default occurred		
8.	Nature of the debt		
9.	Name, address and other particulars of corporate debtor		
10.	Secured debt including particulars of security held, the date of its creation, estimated value of security as per the creditor and details of security		
11.	Unsecured debt		
12.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers		
13.	Record of default with the information utility, if any		
14.	List of documents attached to this application in order to prove the existence of debt and the amount in default		
15.	Statement by guarantor in respect of excluded debts	<p>I [<i>guarantor</i>] hereby state that the debt(s) for which the insolvency resolution process application is filed does not include any-</p> <p>(i) liability to pay fine imposed by a court or tribunal;</p> <p>(ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;</p> <p>(iii) liability to pay maintenance to any person under any law for the time being in force;</p> <p>(iv) liability in relation to a student loan;</p> <p>(v) any other debt prescribed under section 79(15)(e) of the Code.</p>	

**Part IV**

<b>PARTICULARS OF &amp; DECLARATION BY RESOLUTION PROFESSIONAL (IF APPLICATION FILED THROUGH RESOLUTION PROFESSIONAL)</b>			
1.	Title and full name		
2.	Address	Present	Permanent Business
3.	E-mail address(es)		



4.	Contact number	Home	Mobile	Business
5.	Declaration by resolution professional	<p>I, <i>[name of insolvency professional]</i>, an insolvency professional enrolled 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 guarantor]</i> in connection with the proposed insolvency resolution process of <i>[name of the guarantor]</i>.</p> <p>I hereby:</p> <p>(i) agree to accept appointment as the resolution professional if an order of appointment is passed by the Adjudicating Authority;</p> <p>(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;</p> <p>(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>;</p> <p>(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>;</p> <p>(v) affirm that I am eligible to be appointed as a resolution professional in respect of the guarantor in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019;</p> <p>(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> <p>(Signature of the insolvency professional)</p> <p>(Name in block letters)</p>		

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

Yours sincerely,

### DECLARATION

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

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

1. In respect of this 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 nothing 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 no material has been concealed therefrom.

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

\_\_\_\_\_  
(Signature of the Applicant)

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

1. All documents mentioned in serial number 14 of Part III of this form.
2. Copy of the income tax returns with detailed computation of the income of the guarantor, 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. Copies of relevant ownership and title documents for all assets.
7. Copy of the authorisation, 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 guarantor 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) guarantor'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 15 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 guarantor to associates of the corporate debtor for the previous three years;
  - (iv) guarantees given in relation to any of the debts of the corporate debtor, and if any of the guarantors is an associate of the corporate debtor;
  - (v) financial statements with all annexures and schedules for the business owned by the guarantor, or of the firm in which the guarantor is a partner, as the case may be, for the previous three years, if applicable;
  - (vi) wealth tax statements, if any, filed by the guarantor, for the previous five years;
  - (vii) income statement of the guarantor, for the previous three years;
  - (viii) payment of indirect taxes including GST for the previous three years.

**FORM B**

[See rule 7(1)]

**FORM OF DEMAND NOTICE**

**[Under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019]**

[Date]

To

[Name and address of the guarantor]

From

[Name and address of the creditor]

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

Madam/Sir,

1. This letter is a demand notice of unpaid debt in default due from [name of corporate 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), and details of securities	
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 corporate 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 guarantor; or

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

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 guarantor, 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 rule 7(2)]

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

*[Under rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019]*

[Date]

To

The Adjudicating Authority

*[Address]*

From

*[Name and address of the creditor]*

In the matter of *[name of the guarantor]*

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

Madam/Sir,

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

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 GUARANTOR					
1.	Title and full name				
2.	Date of birth and e-mail address (to the extent known)				
3.	Any other name by which the guarantor 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 guarantor, 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 guarantor as on the application date (to the extent known) Note: this will include all assets of guarantor, 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			
		Jewellery			
		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 preceding three years (along with name of company in which directorship is held) and CIN of such companies				
13.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other) (to the extent known)				
14.	Details regarding personal guarantor (in addition to information in serial numbers 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.	Where the guarantor is not resident in India, the name and address of person resident in India authorised to accept the service of process on guarantor's behalf				

**Part-III**

<b>PARTICULARS OF DEBT</b>		
1.	Total debt (including any interest or penalties)	
2.	Amount in default	
3.	Date on which debt was due	
4.	Date on which default occurred	
5.	Nature of the debt	
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)	
7.	Unsecured debt (as applicable)	
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	
9.	Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor 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 corporate 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"> <li>(i) liability to pay fine imposed by a court or tribunal;</li> <li>(ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;</li> <li>(iii) liability to pay maintenance to any person under any law for the time being in force;</li> <li>(iv) liability in relation to a student loan;</li> </ul>

		(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.

#### Part-IV

PARTICULARS OF & DECLARATION BY INSOLVENCY PROFESSIONAL (IF APPLICATION FILED THROUGH INSOLVENCY PROFESSIONAL)				
1.	Title and full name			
2.	Address	Present	Permanent	Business
3.	E-mail address(es)			
4.	Contact number	Home	Mobile	Business
5.	Declaration by insolvency professional	<p>I, <i>[name of insolvency professional]</i>, an insolvency professional enrolled 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 guarantor]</i> in connection with the proposed insolvency resolution process of <i>[name of the guarantor]</i>.</p> <p>I hereby:</p> <p>(i) agree to accept appointment as the resolution professional if an order of appointment is passed by the Adjudicating Authority;</p> <p>(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;</p> <p>(iii) disclose that I am currently serving as an interim resolution professional / resolution professional / authorized representative / liquidator/ bankruptcy trustee in <i>[insert number and details of the proceedings]</i>;</p> <p>(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>;</p> <p>(v) affirm that I am eligible to be appointed as a resolution professional in respect of the guarantor in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019;</p> <p>(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> <p>(Signature of the insolvency professional)</p>		

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

Yours sincerely,

Signature of 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 guarantor in Form B.
3. Copy of the income tax returns with detailed computation of the income of the guarantor, 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 authorisation, 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 guarantor 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 guarantor at any point in time, if available.
9. Documentary evidence of all information sought in each entry for each Part of the form.

**Form D**

[See rule 11(2)]

**APPLICATION FOR WITHDRAWAL OF INSOLVENCY RESOLUTION PROCESS**

**[Under rule 11 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019]**

[Date]

To

The Adjudicating Authority

[Address]

From

[Name and address of applicant]

In the matter of [name of guarantor]

**Subject: Withdrawal of application for insolvency resolution process of [name of guarantor] admitted on .....**

1. [Name of applicant], had filed an application bearing [particulars of application, i.e, diary number/ case number] on [date of filing] before the Adjudicating Authority under [Section 94/ Section 95] of the Code. The said application was admitted by the Adjudicating Authority on [date] bearing [case number].
2. I hereby withdraw the application bearing [particulars of application i.e, diary number/ case number] filed by [ name of applicant] before the Adjudicating Authority under [Section 94/ Section 95] of the Code.
3. The creditor(s) have approved the request for withdrawal of the application under rule 11.
4. I have been authorised by the applicant to file this application of withdrawal with the Adjudicating Authority.(strike out if not applicable)
5. The required bank guarantee towards estimated cost incurred in the process by the resolution professional is attached.

(Signature of the applicant or person authorised by the applicant)

Date:

Place:

[F. No. 30/21/2018-Insolvency Section]

GYANESHWAR KUMAR SINGH, Jt. Secy.

(4) शोधन अक्षमता न्यासी विक्रय के निबंधन और शर्तें तैयार करेगा, जिनके अंतर्गत, आरक्षित कीमत, अग्रिम धन जमा, बोली-पूर्व अर्हता और पूरा संदाय करने के लिए समय अवधि हैं।

(5) आरक्षित कीमत विनियम 30 के अनुसार निकाला गया आस्ति का मूल्य होगा और ऐसा मूल्यांकन छह मास से अधिक पुराना नहीं होगा :

परन्तु ऐसी कीमत पर नीलामी के असफल होने की दशा में, शोधन अक्षमता न्यासी, समिति से परामर्श करके, पश्चात्पूर्व नीलामियां करने के लिए ऐसी आरक्षित कीमत को घटाकर ऐसे मूल्य के पचहत्तर प्रतिशत तक कर सकेगा:

परन्तु यह और कि कीमत को घटाकर पचहत्तर प्रतिशत तक करने के बावजूद किसी नीलामी के असफल होने की दशा में, समिति के अनुमोदन से कीमत को और घटाया जा सकेगा।

(6) शोधन अक्षमता न्यासी हितबद्ध क्रेताओं द्वारा सम्यक् तत्परता के संचालन के लिए कोई सहायता, यदि आवश्यक हो, प्रदान करेगा।

(7) शोधन अक्षमता न्यासी आस्तियों का विक्रय किसी आनलाइन पोर्टल पर या बोर्ड द्वारा अभिहित किसी पोर्टल पर (यदि कोई है) इलेक्ट्रॉनिक नीलामी के माध्यम से करेगा, जहां हितबद्ध क्रेता आनलाइन रजिस्टर कर सकता है, बोली लगा सकता है और अपनी बोली की स्वीकृति की पुष्टि प्राप्त कर सकता है।

(8) शोधन अक्षमता न्यासी आस्तियों का विक्रय न्यायनिर्णायक प्राधिकारी की पूर्व अनुज्ञा से भौतिक नीलामी द्वारा कर सकता है, यदि उसकी यह राय हो कि इससे आस्तियों के विक्रय से अधिकतम वसूली होगी और यह लेनदारों के सर्वोत्तम हित में है।

(9) शोधन अक्षमता न्यासी ऐसे अर्हित व्यावसायिक नीलामीकर्ताओं की सेवाएं ले सकेगा, जिन्हें आस्तियों की नीलामी करने में विशिष्टता प्राप्त है, बशर्ते ऐसा नीलामीकर्ता विनियम 5 में दी गई अपेक्षाओं पूरी करता हो।

(10) नीलामी पारदर्शी होगी और जब तक शोधन अक्षमता न्यासी ने न्यायनिर्णायक प्राधिकारी से बोली की कीमत की दृश्यमानता के संबंध में अन्यथा अनुज्ञात करते हुए अनुज्ञा प्राप्त न की हो, किसी विशिष्ट समय पर उच्चतम बोली अन्य बोलीकर्ताओं को दृश्यमान होगी।

(11) शोधन अक्षमता न्यासी, यदि अपेक्षित हो, आस्तियों के विक्रय से अधिकतम वसूली करने और लेनदारों के सर्वोत्तम हितों का संवर्धन करने की दृष्टि से नीलामियों के कई दौर चला सकेगा।

(12) नीलामी की समाप्ति पर, उच्चतम बोलीकर्ता को संदाय सारणी संसूचित की जाएगी। पूरी रकम का संदाय कर दिए जाने पर, शोधन अक्षमता न्यासी विक्रय का निष्पादन करेगा और आस्ति को विक्रय के निबंधनों में विनिर्दिष्ट रीति में अंतरित कर दिया जाएगा।

#### भाग ख- प्राइवेट विक्रय

(1) जहां किसी आस्ति का विक्रय प्राइवेट विक्रय के माध्यम से किया जाना है वहां शोधन अक्षमता न्यासी इसमें विनिर्दिष्ट रीति में विक्रय का संचालन करेगा।

(2) शोधन अक्षमता न्यासी, प्राइवेट विक्रय द्वारा बेची जाने वाली आस्तियों के लिए हितबद्ध क्रेताओं तक पहुंच के लिए लिखित में एक विक्रय रणनीति तैयार करेगा, जो कि विनियम 10 के अधीन प्रगति रिपोर्ट के साथ न्यायनिर्णायक प्राधिकारी को प्रस्तुत की जाएगी।

(3) प्राइवेट विक्रय का संचालन संभावित क्रेताओं या उसके अभिकर्ताओं से सीधे संपर्क करके, खुदरा दुकानों के माध्यम से या किसी अन्य माध्यम से किया जाएगा, जिससे आस्तियों के विक्रय से अधिकतम वसूली होनी की संभावना हो।

(4) विक्रय का पूरा होना और आस्तियों का परिदान विक्रय के निबंधनों के अनुसार होगा।

डॉ. एम. एस. साहू, अध्यक्ष

[विज्ञापन III/4/असा./299/19]

### INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

#### NOTIFICATION

New Delhi, the 20th November, 2019

#### INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (BANKRUPTCY PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS) REGULATIONS, 2019

**No. IBBI/2019-20/GN/REG051.**—In exercise of the powers conferred by clause (t) of sub-section (1) of section 196, and clauses (zr) and (zs) of sub-section (1) of section 240 read with clause (e) of section 2 and 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, commencement and application.**

- (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
- (2) They shall come into force from the 1<sup>st</sup> day of December, 2019.
- (3) These regulations shall apply to the bankruptcy process for personal guarantors to corporate debtors.

**2. Definitions.**

In these regulations, unless the context otherwise requires, -

- (a) “associate” in relation to a creditor, a bankruptcy trustee or professionals appointed by the bankruptcy trustee shall have the same meaning as assigned to it in relation to a debtor in sub-section (2) of section 79, as may be applicable;
- (b) “bankruptcy process costs” shall mean -
  - (i) the fees payable to the bankruptcy trustee;
  - (ii) payments and expenses referred to in sub-regulation (1) of regulation 5, sub-regulation (4) of regulation 6, sub-clause (ii) of clause (c) and clause (f) of sub-regulation (3) of regulation 10, sub-regulation (3) of regulation 28, and sub-regulation (3) of regulation 31;
  - (iii) such other costs and expenses directly relatable to the bankruptcy process,to the extent approved or ratified by the committee;
- (c) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
- (d) “committee” means the committee of creditors as defined in sub-section (11) of section 79;
- (e) “corporate debtor” means a corporate person for whom the guarantor has given a personal guarantee;
- (f) “electronic means” means an authorised 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;
- (g) “form” means a form appended to these regulations;
- (h) “participant” means a person entitled to attend a meeting of the committee and includes a creditor, , bankrupt, bankruptcy trustee, and any other person authorised by the committee to attend such meeting;
- (i) “registered valuer” means a person registered as such in accordance with the Companies Act, 2013 (18 of 2013) and the rules made thereunder;
- (j) “related party” in relation to a corporate debtor shall have the meaning assigned to it in sub-section (24) of section 5;
- (k) “section” means a section of the Code;
- (l) words and expressions used and not defined in these regulations, but defined in the Code and the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019, shall have the respective meanings assigned to them in the Code and in the said rules.

**CHAPTER II**  
**BANKRUPTCY TRUSTEE**

**3. Eligibility of bankruptcy trustee.**

- (1) An insolvency professional shall be eligible to be appointed as a bankruptcy trustee for a bankruptcy process, if-
  - (a) he, the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;
  - (b) he is not subject to any ongoing disciplinary proceeding or a restraint order of the Board or of the insolvency professional agency of which he is a professional member; and
  - (c) the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the bankruptcy process.

*Explanation.* - For the purposes of this sub-regulation, a person shall be considered independent of the guarantor, if he-

- (a) is not an associate of the guarantor;
  - (b) is not a related party of the corporate debtor; and
  - (c) has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor.
- (2) A bankruptcy trustee, who has been an auditor of the guarantor at any time during the preceding three years, shall make a disclosure of remuneration received, year-wise for such audit, to the committee.
- (3) An insolvency professional, other than who has filed an application under section 122 or 123 on behalf of a guarantor or a creditor, as the case may be, shall provide a written consent in Form A to the Adjudicating Authority before his appointment as bankruptcy trustee in a bankruptcy process.

#### **4. Fees of bankruptcy trustee.**

- (1) The bankruptcy trustee shall be entitled to such fee and the fee shall be paid in such manner as decided by the committee.
- (2) In all cases other than those covered under sub-regulation (1), the bankruptcy trustee shall be entitled to a fee as a percentage of the amount realised from the estate of the bankrupt and of the amount distributed from such realisation, in accordance with Schedule I.

#### **5. Appointment of professionals.**

- (1) A bankruptcy trustee may appoint accountants, registered valuers, advocates or other professionals, as may be necessary, to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the bankruptcy process cost:

Provided that the following persons shall not be appointed under this regulation, namely-

- (a) a relative of the bankruptcy trustee;
  - (b) a partner or director of the insolvency professional entity of which the bankruptcy trustee is a partner or director;
  - (c) an insolvency professional who has acted or is acting as an interim resolution professional, a resolution professional or a liquidator in respect of the corporate debtor;
  - (d) an associate of the bankrupt;
  - (e) a related party of the corporate debtor.
- (2) Before appointing a professional under sub-regulation (1), the bankruptcy trustee shall obtain a disclosure of details of the existence of any pecuniary or personal relationship with any of the creditors, the bankruptcy trustee, the corporate debtor or the bankrupt, from the professional.

#### **6. Registers and books.**

- (1) Where the books of account of the bankrupt are incomplete on the bankruptcy commencement date, the bankruptcy trustee shall get them completed and brought up-to-date within sixty days of the bankruptcy commencement date.
- (2) The bankruptcy trustee shall maintain cash book, ledgers, registers and such other books, as may be required for the administration of the estate of the bankrupt.
- (3) Where the bankruptcy trustee is authorised to carry on the business of the bankrupt, he shall keep separate books of account in respect of such business and such books shall, as far as possible, be in conformity with the books already kept by the bankrupt in the course of its business.
- (4) The bankruptcy trustee shall keep receipts for all payments made or expenses incurred by him in relation to the bankruptcy process.

#### **7. Reports by bankruptcy trustee.**

The bankruptcy trustee shall prepare and submit the following reports to the Adjudicating Authority and the committee -

- (a) a preliminary report;
- (b) progress reports; and
- (c) a final report.

**8. Preliminary report.**

- (1) The bankruptcy trustee shall submit a preliminary report to the Adjudicating Authority and the committee within ninety days of the bankruptcy commencement date.
- (2) The bankruptcy trustee shall send a copy of the preliminary report to the bankrupt at the time of submission of the report.
- (3) The preliminary report shall include the following details-

- (a) a list of the assets and liabilities of the bankrupt as on the bankruptcy commencement date based on the books of the bankrupt:

Provided that if the bankruptcy trustee has reasons to believe, to be recorded in writing, that the books of the bankrupt are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him.

- (b) the proposed plan of action in relation to administration of the estate, including the timeline in which it is proposed to be carried out and the estimated costs;
- (c) any further inquiry to be made in respect of the assets, business or affairs of the bankrupt;
- (d) details of the assets which are intended to be realised, including the following-
  - (i) value of the assets, valued in accordance with regulation 33;
  - (ii) intended manner of realisation of the assets and reasons thereof;
  - (iii) expected amount of realisation;
  - (iv) any other information that may be relevant for the realisation of the assets.
- (e) details of the excluded assets and other assets under sub-section (2) of section 155.

- (4) The preliminary report shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it subject to such terms and conditions, as it may consider appropriate.

**9. Early completion of administration.**

At the time of the preparation of the preliminary report or any time thereafter, if it appears to the bankruptcy trustee that –

- (a) the realisable assets of the bankrupt are insufficient to cover the costs of bankruptcy process; and
- (b) the affairs of the bankrupt do not require further investigation,

he may apply to the Adjudicating Authority for an early discharge order.

**10. Progress reports.**

- (1) The bankruptcy trustee shall submit progress reports to the Adjudicating Authority and to the committee within fifteen days after the end of every quarter:

Provided that if an insolvency professional ceases to act as a bankruptcy trustee during the bankruptcy process, he shall file a progress report for the quarter up to the date of his so ceasing to act, within fifteen days of such cessation.

- (2) The bankruptcy trustee shall send a copy of the progress report to the bankrupt at the time of submission of the report under sub-regulation (1).

- (3) The progress report shall include-

- (a) appointment, tenure of appointment and cessation of appointment of professionals;
- (b) a statement indicating the progress in the bankruptcy process containing-
  - (i) distribution of dividend and interim dividend;
  - (ii) any material change in the expected realisation for any asset and basis for such change;
  - (iii) any material change in the value of assets or liabilities of the bankrupt and basis for such change;
  - (iv) any material change on estimated cost of bankruptcy process and basis for such change;
  - (v) distribution of unsold property made to the creditors;
  - (vi) details of any property that remains to be realised;

- (vii) list of creditors; and
- (viii) any other relevant information.
- (c) an asset sale report with the following details of the assets realised—
  - (i) realised value;
  - (ii) cost of realisation;
  - (iii) manner and mode of realisation, including details as per Schedule II;
  - (iv) reasons for any reduction in the realisable value compared to the value mentioned in the preliminary report; and
  - (v) details of the persons in favour of whom the property has been realised.
- (d) details of fee and remuneration due to and received by the bankruptcy trustee along with a description of the activities carried out by him;
- (e) details of the fee and remuneration paid to professionals appointed by the bankruptcy trustee along with a description of activities carried out by them;
- (f) other expenses incurred by the bankruptcy trustee in relation to the bankruptcy process;
- (g) status of any material litigation by or against the bankrupt;
- (h) filing of and developments in relation to disclaimer of onerous properties or leasehold interests under sections 160 and 162, or transactions under sections 164, 165 and 167.
- (i) accounts maintained by the bankruptcy trustee showing the receipts and payments made during the period of the report, as well as cumulative receipts and payments made since the bankruptcy commencement date; and
- (j) any other relevant aspect of the bankruptcy process.
- (4) The progress report for the fourth quarter of the financial year shall enclose audited accounts of the receipts and payments of the bankrupt for the financial year.
- (5) The progress reports shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it on specified terms and conditions.

#### *Illustration*

Where an insolvency professional becomes a bankruptcy trustee on 13<sup>th</sup> February, 2020 and ceases to act as such on 12<sup>th</sup> February, 2021, he shall submit progress reports as under:

Report No.	Period covered in the Quarter	Last Date of Submission of Report
1	13th February - 31st March, 2020	15th April, 2020
2	April - June, 2020	15th July, 2020
3	July - September, 2020	15th October, 2020
4	October - December, 2020	15th January, 2021
5	January - 12th February, 2021	27th February, 2021

He shall submit the audited accounts of receipts and payments as under:

Account No.	Period covered in the Quarter	Last Date of Submission of Report
1	13th February - 31st March, 2020	15th April, 2020
2	1st April, 2019 - 12th February, 2021	27th February, 2021

### **11. Final report.**

- (1) The final report shall contain an account of the completion of the administration and distribution of the estate of the bankrupt, including -
  - (a) manner of realisation of the assets of the bankrupt;
  - (b) manner of distribution of the dividends amongst the creditors;

- (c) details regarding the discharge of the bankrupt;
  - (d) unclaimed dividend, if any;
  - (e) surplus dividend, if any; and
  - (f) if the bankruptcy process cost exceeds the estimated cost provided in the preliminary report, along with reasons for the same.
- (2) The bankruptcy trustee shall file the final report with the Adjudicating Authority along with the application under sub-section (1) of section 138.

#### **12. Persons to extend cooperation.**

- (1) The following persons shall extend all assistance and cooperation to the bankruptcy trustee to complete the bankruptcy process-
- (a) the bankrupt;
  - (b) creditors of the bankrupt;
  - (c) employees and workmen of the bankrupt;
  - (d) partners of the bankrupt;
  - (e) auditors of the bankrupt;
  - (f) professionals appointed by the bankruptcy trustee under these regulations;
  - (g) the resolution professional or the previous bankruptcy trustee of the bankrupt;
  - (h) the interim resolution professional, the resolution professional and the liquidator in respect of the corporate debtor;
  - (i) any person who has possession of any of the properties of the bankrupt; and
  - (j) any other person connected or relevant to the bankruptcy process.
- (2) The bankruptcy trustee shall record and maintain the particulars of any consultation he had with the persons mentioned in sub-regulation (1).
- (3) Where the bankruptcy trustee after making reasonable efforts fails to obtain the information or cooperation from persons under sub-regulation (1), he may make an application to the Adjudicating Authority for appropriate directions as may be necessary for the conduct of the bankruptcy process.

#### **13. Preservation of records.**

The bankruptcy trustee shall preserve a physical or electronic copy of the registers, books, reports, minutes of meetings and other records relating to bankruptcy process, including administration of estate of the bankrupt as per the record retention schedule as may be communicated by the Board in consultation with insolvency professional agencies.

### **CHAPTER III**

#### **CLAIMS**

#### **14. Future claims.**

- (1) A person, who is entitled to distribution in the same manner as any other creditor, may submit a claim, which is not due and payable on the bankruptcy commencement date, to the bankruptcy trustee.
- (2) Subject to any contract to the contrary, the person under sub-regulation (1) shall be entitled to the principal amount and the interest that has accrued till the bankruptcy commencement date.

#### **15. Negotiable instruments.**

Where a person seeks to prove a claim in respect of a bill of exchange, promissory note or other negotiable instrument or security of a like nature for which the bankrupt is liable, a certified true copy of the same shall accompany the claim.

#### **16. Periodical payments.**

In the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the bankruptcy commencement date.

**17. Determination of quantum of claim.**

Where the amount claimed by a claimant is not precise due to any reason, the bankruptcy trustee shall make the best estimate of the amount of the claim based on the information available with him.

**18. Debt in foreign currency.**

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

*Explanation.* – For the purposes of this regulation, “official exchange rate” means the reference rate published by the Reserve Bank of India or derived from such reference rate.

**19. Transfer of debt due to creditors.**

(1) Where a creditor assigns or transfers the debt to any person during the bankruptcy process period, both parties shall provide the bankruptcy trustee the terms of such assignment or transfer, and the identity and details of the assignee or transferee.

(2) The bankruptcy trustee shall notify each creditor and the Adjudicating Authority of any resultant change in the committee within two days of such change.

**20. Committee of creditors.**

(1) The bankruptcy trustee shall prepare a list of creditors, within the timeline mentioned in section 132, containing the following details in respect of each creditor, –

- (a) the name;
- (b) the amount of claim made;
- (c) the amount of claim admitted;
- (d) security interest in respect of the claims, if any; and
- (e) reasons for rejection or admission of claim.

(2) The bankruptcy trustee shall report the establishment of the committee to the Adjudicating Authority within three days from the meeting of the creditors under sub-section (1) of section 134.

(3) The bankruptcy trustee shall modify the list of creditors and the composition of the committee, if required, on the basis of the proof received under section 171.

(4) The list of creditors, and any modification to the committee, mentioned in sub-regulation (3) shall be filed with the Adjudicating Authority within fifteen days from the last date for receipt of proofs of debt, under intimation to other creditors.

(5) Any modification in the list of creditors under sub-regulation (3) shall not affect the validity of any decision taken in any meeting of the committee prior to such modification.

(6) The list of creditors, as modified from time to time and filed with the Adjudicating Authority, shall be –

- (a) available for inspection by the persons who submitted claims with proof;
- (b) available for inspection by partners and guarantors of the bankrupt;
- (c) displayed on the website, if any, of the bankrupt.

**CHAPTER IV****MEETINGS OF COMMITTEE AND VOTING****21. Notice for meeting.**

- (1) A bankruptcy trustee may convene a meeting of the committee as and when he considers necessary and shall convene a meeting on a request by creditors having not less than thirty three percent of voting share.
- (2) The notice under this regulation and for the meeting under section 133 shall be served on every participant at the address provided to the bankruptcy trustee.



- (3) A meeting of the committee shall be convened by giving a notice of seven days or such other notice as decided by the committee, provided that such notice shall not be less than forty-eight hours.
- (4) The notice convening the meeting of creditors shall inform the participants of the venue, the time, the date of the meeting and of the options available to -
  - (i) participants to attend the meeting either in person, through video conferencing, or through a proxy; and
  - (ii) creditors to cast vote in person, through a proxy, by electronic means or by electronic proxy, as the case may be.
- (5) The notice of the meeting shall carry the agenda, which shall include the following-
  - (a) list of matters to be discussed;
  - (b) list of issues to be voted upon;
  - (c) relevant documents in relation to the matters to be discussed and issues to be voted upon.
- (6) If an option to attend the meeting through video conferencing is made available to the participants, the notice of the meeting shall -
  - (a) state the process and the manner for attending the meeting;
  - (b) provide the login ID and the details of a facility for generating password for access to the meeting in a secure manner; and
  - (c) provide contact details of the person who shall address the queries connected with the video conferencing.
- (7) If an option to cast vote by electronic means is made available to the creditors, the notice of the meeting shall -
  - (a) state the process and the manner of casting vote by such means;
  - (b) provide the login ID and the details of a facility for generating password for access to the electronic means for casting vote in a secure manner; and
  - (c) provide contact details of the person who shall address the queries connected with the electronic means.

## **22. Quorum.**

- (1) Where a meeting of committee could not be held for want of quorum, unless the committee has previously decided otherwise, the meeting shall automatically stand adjourned to the same time and place on the next day and on that day, no quorum shall be required.
- (2) The bankrupt shall attend a meeting which the bankruptcy trustee may, by notice, require him to attend and any adjournment thereof.

## **23. Conduct of meeting.**

- (1) The bankruptcy trustee shall preside over the meetings of the committee.
- (2) At the commencement of a meeting, the bankruptcy trustee shall take a roll call, when every participant, including those attending by proxy or through video conferencing, shall state, for the record, the following -
  - (a) his name;
  - (b) the capacity in which he is attending;
  - (c) the creditor he is representing, if applicable; and
  - (d) that he has received the agenda and all the relevant material for the meeting.
- (3) After the roll call, the bankruptcy trustee 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 bankruptcy trustee 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 bankruptcy trustee, shall be allowed access to the meeting, without the permission of the bankruptcy trustee.
- (6) The bankruptcy trustee shall ensure that minutes are made in relation to each meeting of the creditors and are circulated to all participants by electronic means within forty-eight hours of the said meeting.

## **24. Voting share.**

- (1) Subject to section 135, the voting share of each creditor shall be in proportion to the debt owed to such creditor.

- (2) The voting share of a secured creditor shall be in proportion to unsecured part of the debt, if any, if it has opted to enforce its security interest.
- (3) The voting share of a secured creditor who has opted to relinquish its security interest shall be in proportion to the amount of debt relinquished.

#### **25. Voting by the committee.**

- (1) The bankruptcy trustee shall take a vote of the creditors present in the meeting on any item listed for voting, after discussion on the same.
- (2) At the conclusion of the meeting, the bankruptcy trustee shall prepare minutes of the meeting, including the names of creditors, who voted for, against or abstained from voting on the items put to vote in the meeting.
- (3) The bankruptcy trustee shall-
  - (a) circulate the minutes of the meeting by electronic means to all participants of the meeting within forty-eight hours of the conclusion of the meeting, and
  - (b) seek a vote on the items 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, where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes as per clause (a).
- (4) Unless otherwise provided in the Code, any decision of the committee shall require approval of more than fifty percent of voting share of the creditors who voted.
- (5) At the end of the voting period, the bankruptcy trustee shall record the decision arrived at on the items along with the names of creditors who voted for, against or abstained from voting on the items, after considering the voting at the meeting and through the electronic means.
- (6) The bankruptcy trustee shall circulate a copy of the record made under sub-regulation (5) to all participants within twenty-four hours of the conclusion of the voting.

#### **26. Voting by proxy.**

- (1) A creditor, who is entitled to vote, shall be entitled to appoint an individual as a proxy, who shall not be an associate of the bankrupt, to attend and vote on behalf.
- (2) For the purpose of sub-regulation (1), a creditor shall deliver Form B, duly completed to the bankruptcy trustee at least twenty-four hours prior to the meeting of committee.
- (3) A proxy may vote by electronic means on behalf of the creditor.

### **CHAPTER V**

#### **REALISATION OF ASSETS**

#### **27. Mode of sale.**

- (1) The bankruptcy trustee shall ordinarily sell the assets of the bankrupt through an auction as specified in Part A of Schedule II.
- (2) The bankruptcy trustee may sell the assets by private sale, in the manner specified in Part B of Schedule II if-
  - (a) the asset is perishable in nature;
  - (b) the value of the asset is likely to deteriorate significantly if the sale is delayed; or
  - (c) the selling price of the asset is higher than the reserve price of a failed auction.
- (3) The following persons shall not purchase or acquire any interest in the property of bankrupt, directly or indirectly, without permission of the Adjudicating Authority-
  - (a) the bankruptcy trustee or any partner or director of the insolvency professional entity of which the bankruptcy trustee is a partner or director;
  - (b) any professional appointed by the bankruptcy trustee for the bankruptcy process;
  - (c) any creditor or associate of the bankrupt; and
  - (d) any company where the bankrupt or a creditor is a promoter or director.
- (4) The bankruptcy trustee shall not proceed with a sale, if he has reason to believe that there is any collusion amongst any one or more of the following persons: -
  - (a) the buyers;

- (b) the bankrupt;
- (c) the creditors;
- (d) associates of the bankrupt or creditors;
- (e) the corporate debtor; or
- (f) related party of the corporate debtor,

and shall submit a report to the Adjudicating Authority for appropriate orders.

**28. Acquisition, etc., of after acquired property by bankrupt.**

- (1) After a notice is given by the bankrupt under sub-section (2) of section 150, he shall not part with any increase in his income or dispose of any property acquired, without the prior permission of the Adjudicating Authority.
- (2) If the bankrupt disposes of property before giving the notice under sub-section (2) of section 150, he shall within seven days from such disposal, disclose to the bankruptcy trustee the relevant details of the person to whom the property has been transferred, and shall also provide any other information which may be necessary to enable the bankruptcy trustee to trace the property and recover it for the purpose of bankruptcy estate.
- (3) Any expense incurred by the bankruptcy trustee in bringing back any amount or acquiring title to the property referred to in sub-regulation (2) shall form part of the bankruptcy process costs.

**29. Disclaimer of onerous property.**

- (1) The bankruptcy trustee shall notify the bankrupt and the persons interested in the onerous property in respect of the proposed disclaimer, at least seven days prior to serving the notice of disclaimer under sub-section (1) of section 160.
- (2) The notification under sub-regulation (1) shall contain the intention of the bankruptcy trustee to disclaim the property, particulars of the property intended to be disclaimed, and details of the interested persons in such property.
- (3) The notice under sub-section (1) of section 160 shall be filed with the Adjudicating Authority within three days of giving such notice to the persons mentioned therein.
- (4) An application under sub-section (1) of section 163 shall be made within thirty days of the applicant becoming aware of the disclaimer or from the date of the notice of disclaimer under sub-section (1) of section 160, whichever is earlier.

*Explanation.* – For the purpose of this regulation, a person interested in onerous property means –

- (a) any person who claims an interest in the disclaimed property;
- (b) any person who is under any liability in respect of the onerous property; or
- (c) where the disclaimed property is a dwelling house, any person who is in occupation of or entitled to occupy the dwelling house, on the date of filing of application.

**30. Valuation of assets.**

- (1) The bankruptcy trustee shall appoint a registered valuer to value the assets, which may or may not form part of the bankrupt's estate, when he is of the opinion that it is necessary or when a resolution to that effect has been passed by the committee.
- (2) The registered valuer appointed under sub-regulation (1) shall submit to the bankruptcy trustee the estimates of the realisable value of the asset computed in accordance with internationally accepted valuation standards, after physical verification of the assets of the bankrupt.
- (3) The bankruptcy trustee may appoint an additional registered valuer, for valuing the assets of the bankrupt if required in the circumstances of the case, who shall independently submit his estimate as per sub-regulation (2).
- (4) In the event an additional registered valuer is appointed under sub-regulation (3), the average of the estimates received from both valuers will be considered to be the value of the assets.

**31. Realisation of security interest.**

- (1) A secured creditor, who seeks to realise his security, shall intimate the bankruptcy trustee of the price at which he proposes to realise the secured asset.

- (2) The bankruptcy trustee shall attempt to identify a buyer willing to purchase the security at a price higher than the price intimated under sub-regulation (1), and the asset shall then be sold to such buyer, if any, at the higher price by the secured creditor.
- (3) Where the secured asset is realised under sub-regulation (2), the cost of identification of the buyer shall form part of bankruptcy process cost.
- (4) If the bankruptcy trustee does not identify a buyer under sub-regulation (2), or the person so identified does not buy the secured asset, the secured creditor may realise the secured asset in the manner it deems fit, but at least at the price intimated under sub-regulation (1) and shall bear the cost of identification of the buyer.
- (5) Where a secured creditor realises his security and the amount realised is in excess of the debts due to the secured creditor, such creditor shall tender such excess to the bankruptcy trustee.

## **CHAPTER VI**

### **PROCEEDS OF BANKRUPTCY PROCESS AND DISTRIBUTION OF PROCEEDS**

#### **32. Bank account for bankruptcy process.**

- (1) The bankruptcy trustee shall open a bank account in the name of the bankrupt followed by the words 'in bankruptcy process', in a scheduled bank, for the receipt of all moneys due to the bankrupt.
- (2) The bankruptcy trustee shall deposit in the bank account opened under sub-regulation (1) all moneys, including cheques and demand drafts received by him as the bankruptcy trustee of the bankrupt, and the realisations of each day shall be deposited into the bank account, without any deduction, not later than the next working day.
- (3) The bankruptcy trustee may maintain cash of ten thousand rupees or such higher amount, as may be permitted by the Adjudicating Authority to meet bankruptcy process costs.
- (4) All payments out of the account by the bankruptcy trustee above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.

#### **33. Distribution of dividend to claimant of deceased creditor.**

- (1) In the event an application is made by a claimant or heir of a deceased creditor for receiving dividend payable to such deceased creditor, the bankruptcy trustee shall satisfy himself as to the claimant's right and title to receive the dividend, and may call for evidence regarding such right or title.
- (2) On being satisfied of the veracity of the claim as per sub-regulation (1), the bankruptcy trustee may apply to the Adjudicating Authority for sanctioning the payment of such dividend or return to the claimant.

#### **34. Distribution of dividend.**

- (1) Subject to the provisions of sections 174 and 178, the bankruptcy trustee shall not commence distribution of dividend unless a preliminary report is filed with the Adjudicating Authority.
- (2) The bankruptcy process cost shall be deducted before any dividend is distributed under this regulation.

#### **35. Return of amount.**

A creditor shall forthwith return any amount received by him in distribution, which he was not entitled to at the time of distribution, or subsequently.

#### **36. Unclaimed proceeds of bankruptcy or undistributed assets.**

- (1) After filing the final report under regulation 11, the bankruptcy trustee shall, within three days from the date of such filing, apply to the Adjudicating Authority for an order to credit to the Insolvency and Bankruptcy Fund formed under the Code, any unclaimed dividends of bankruptcy process or undistributed asset or any other balance amount payable to the creditors, left with him.
- (2) Without prejudice to any penalty that may be imposed by the Board, the bankruptcy trustee shall be liable to pay interest at the rate of twelve percent per annum on the amount retained by him under sub-regulation (1), if he fails to-
  - (a) apply to the Adjudicating Authority within three days from the date of filing;
  - (b) credit to the Fund within three days from the date of order of the Adjudicating Authority.

(3) The bankruptcy trustee shall, when crediting the amount referred to in sub-regulation (1), furnish to the Board, a statement setting forth the following –

- (a) the names and last known address of the creditors entitled to the unclaimed dividend or undistributed asset or any other balance;
  - (b) the amount of the unclaimed dividend or any other balance for each creditor under (a);
  - (c) the value of the undistributed assets.
- (4) The bankruptcy trustee shall be entitled to a receipt from the Board for any amount deposited by him under sub-regulation (2), and such receipt shall be proof of credit by him.
- (5) A person claiming to be entitled to any amount paid into the Insolvency and Bankruptcy Fund may apply to the Board for an order for payment of the amount claimed.
- (6) The Board may, if satisfied that the person referred to in sub-regulation (5) is entitled to the whole or any part of the amount claimed, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.
- (7) Any amount paid into the Insolvency and Bankruptcy Fund under sub-regulation (1), which remains unclaimed for a period of fifteen years, shall be liable to be utilised for the purposes of the Insolvency and Bankruptcy Fund.

### 37. Debt counselling.

Debt counselling in relation to bankruptcy process may be provided to a bankrupt by such person as may be recognised by the Board or the Central Government, as the case may be.

### FORM A

#### WRITTEN CONSENT TO ACT AS BANKRUPTCY TRUSTEE

*(Under regulation 3(3) of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)*

*[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 bankruptcy trustee.**

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 bankruptcy trustee for the bankruptcy process of *[name of the bankrupt]*.

2. In accordance with regulation 3(3) of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, 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 bankruptcy trustee.
- (d) I am eligible to be appointed as bankruptcy trustee of the bankrupt under regulation 3 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 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 have the following processes in hand:

Sl. No.	Role as	No. of processes on the date of consent
1	Interim Resolution Professional	
2	Resolution Professional of:	
	a. Corporate debtors	
	b. Personal guarantors or individuals or partnership firms	
3	Liquidator of:	
	a. Liquidation Process	
	b. Voluntary Liquidation Process	
4	Bankruptcy Trustee	
5	Authorised Representative	
6	Any other (please state)	

Date:

Place:

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

### FORM B

#### Form to appoint proxy

*(Under regulation 26(2) of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)*

Full name of the bankrupt: *[Insert matter name / application number for the bankruptcy process]*

<b>Full Name of Creditor</b>				
<b>Address</b>	Present	Permanent	Business	
<b>Identification number</b>	Aadhaar Number	PAN	CIN	GSTIN
<b>Email</b>				

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

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

or failing him;

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

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

#### SCHEDULE I

#### FEES OF BANKRUPTCY TRUSTEE

[Under regulation 4(2)]

Amount of realisation in rupees (less bankruptcy process cost)	Percentage of fee on the amount realised			
	in the first six months	in the next three months	in the next three months	thereafter
On the first 25 lakh	10.00	7.50	5.00	3.75
On the next 50 lakh	7.50	5.00	3.75	2.80
On the next 1 crore	5.00	3.75	2.50	1.88
On the next 9 crore	3.75	2.80	1.88	1.41
On the next 40 crore	2.50	1.88	1.25	0.94
On the next 50 crore	1.25	0.94	0.68	0.51
On further sums realised	0.25	0.19	0.13	0.10
Amount of distribution in rupees	Percentage of fee on the amount distributed			
	in the first six months	in the next three months	in the next three months	thereafter
On the first 50 lakh	5.00	3.75	3.00	1.88
On the next 75 lakh	3.75	3.00	1.88	1.41
On the next 1 crore	2.50	1.88	1.25	0.94
On the next 9 crore	1.88	1.40	0.94	0.71
On the next 40 crore	1.25	0.94	0.63	0.47
On the next 50 crore	0.63	0.48	0.34	0.25
On further sums distributed	0.13	0.10	0.06	0.05

## SCHEDULE II

**Mode of sale**

[Under regulation 27]

**PART A. AUCTION**

- (1) Where an asset is to be sold through auction, the bankruptcy trustee shall do so in the manner specified herein.
- (2) The bankruptcy trustee shall prepare a sale strategy in writing for the sale of the asset and may take help of marketing professionals if it is required, which shall be submitted to the Adjudicating Authority along with the progress report under regulation 10.
- (3) The marketing strategy may include-
  - (a) releasing advertisements for auction of the asset;
  - (b) preparing information sheets for the asset;
  - (c) preparing a notice of sale; and
  - (d) liaising with agents.
- (4) The bankruptcy trustee shall prepare terms and conditions of sale, including reserve price, earnest money deposit, pre-bid qualification, and time period for full payment.
- (5) The reserve price shall be the value of the asset arrived at in accordance with regulation 30 and such valuation shall not be more than six months old:

Provided that in the event an auction fails at such price, the bankruptcy trustee may, in consultation with the committee, reduce such reserve price up to seventy-five percent of such value to conduct subsequent auctions:

Provided further that in the event of an auction failing in spite of reducing the price up to seventy-five percent, the price may further be reduced with the approval of the committee.

- (6) The bankruptcy trustee shall provide any assistance, if necessary, for the conduct of due diligence by interested buyers.
- (7) The bankruptcy trustee shall sell the assets through an electronic auction on an online portal, or on a portal designated by the Board (if any), where the interested buyers can register, bid and receive confirmation of the acceptance of their bid online.
- (8) The bankruptcy trustee may sell assets through a physical auction, with prior permission of the Adjudicating Authority, if he is of the opinion that it will maximise the realisation from the sale of the assets and is in the best interest of the creditors.
- (9) The bankruptcy trustee may engage the services of qualified professional auctioneers specialising in auctioning the assets, provided that such auctioneer fulfils the requirements in regulation 5.
- (10) The auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders unless the bankruptcy trustee has received permission from the Adjudicating Authority allowing otherwise regarding the visibility of the bid price.
- (11) If required, the bankruptcy trustee may conduct multiple rounds of auctions with a view to maximise the realisation from the sale of assets, and to promote the best interests of the creditors.
- (12) On the close of the auction, the payment schedule shall be communicated to the highest bidder. On payment of the full amount, the bankruptcy trustee shall execute the sale and the asset will be transferred in the manner specified in the terms of the sale.

**PART B. PRIVATE SALE**

- (1) Where an asset is to be sold through private sale, the bankruptcy trustee shall conduct the sale in the manner specified herein.
- (2) The bankruptcy trustee shall prepare a sale strategy in writing to approach interested buyers for assets to be sold by private sale, which shall be submitted to the Adjudicating Authority along with the progress report under regulation 10.



- 
- (3) Private sale may be conducted through directly liaising with potential buyers or their agents, through retail shops, or through any other means that is likely to maximise the realisations from the sale of assets.
- (4) The completion of sale, and the delivery of the assets shall be as per the terms of sale.

Dr. M. S. SAHOO, Chairperson

[ADVT.-III/4/Exty./299/19]

## MINISTRY OF CORPORATE AFFAIRS

### NOTIFICATION

New Delhi, the 15th November, 2019

**G.S.R. 855(E).**—In exercise of the powers conferred by sub-section (1) and clauses (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb) and (zc) of sub-section (2) of section 239 read with clause (e) of section 2 and sub-section (2), clauses (c) and (e) of sub-section (14) and clause (e) of sub-section (15) of section 79 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 Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

(2) They shall come into force from the 1<sup>st</sup> day of December, 2019.

2. **Application.**—These rules shall apply to matters relating to bankruptcy of personal guarantors to corporate debtors.

3. **Definitions.**—(1) In these rules, unless the context otherwise requires, -

(a) “Adjudicating Authority” means-

- (i) for the purpose of section 60, the National Company Law Tribunal constituted under section 408 of the Companies Act, 2013 (18 of 2013); or
- (ii) in cases other than sub-clause (i), the Debt Recovery Tribunal established under sub-section (1A) of section 3 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993);

(b) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);

(c) “electronic form” shall have the meaning assigned to it in clause (r) of section 2 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) “form” means a form appended to these rules;

(f) “guarantor” means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part;

(g) “section” means section of the Code;

(h) “serve” means sending any communication by any means, including registered post, speed post, courier or electronic means, which is capable of producing or generating an acknowledgement of receipt of such communication;

Provided that where a document cannot be served in any of the modes, it shall be affixed at the outer door or some other conspicuous part of the house or building in which the addressee ordinarily resides or carries on business or personally works for gain.

(2) Words and expressions used and not defined in these rules, but defined under the Code, shall have the meanings respectively assigned to them in the Code.

4. **Relatives.**— For the purposes of clause (ii) of Explanation to sub-section (2) of section 79, the manner of relationship shall mean the manner as provided in the Explanation to clause (24A) of section 5.

5. **Excluded assets.**— For the purposes of sub-section (14) of section 79, —

(a) the value of unencumbered personal ornaments under clause (c) of the said sub-section shall not exceed one lakh rupees;

(b) the value of unencumbered single dwelling unit owned by the debtor under clause (e) of the said sub-section shall not exceed, —

- (i) in the case of dwelling unit in an urban area, twenty lakh rupees;
- (ii) in the case of dwelling unit in rural area, ten lakh rupees.

*Explanation.*— For the purposes of this rule,–

(a) “rural area” shall have the same meaning as assigned to it in clause (o) of section 2 of the National Rural Employment Guarantee Act, 2005 (42 of 2005);

(b) “urban area” means any area other than rural area.

6. **Application by guarantor.**— (1) The application under sub-section (1) of section 122 shall be submitted in Form A, along with an application fee of two thousand rupees.  
(2) The guarantor shall serve forthwith a copy of the application referred to in sub-rule (1) to every creditor and the corporate debtor for whom the guarantor is a personal guarantor.
7. **Application by creditor.**— (1) The application under sub-section (1) of section 123 shall be submitted in Form B, along with a fee of two thousand rupees.  
(2) The creditor shall serve forthwith a copy of the application referred to in sub-rule (1) to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor.  
(3) In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.
8. **Confirmation or nomination of insolvency professional.**— (1) For the purposes of sub-section (2) of section 125 and sub-section (5) of section 145, the Board may share the database of the insolvency professionals, including information about disciplinary proceedings against them, with the Adjudicating Authority from time to time.  
(2) For the purposes of sub-section (4) of section 125, sub-section (3) of section 146 and sub-section (3) of section 147, the Board may share a panel of insolvency professionals, who may be appointed as bankruptcy trustee, with the Adjudicating Authority.
9. **Public notice.** — (1) The Adjudicating Authority shall issue a public notice inviting claims from all creditors of the bankrupt, under clause (b) of sub-section (1) of section 130, in Form C.  
(2) The Adjudicating Authority may direct the bankruptcy trustee to issue the public notice referred to in sub-rule (1), instead of issuing such notices itself.
10. **Notice to creditors.**— (1) The Adjudicating Authority shall send notices to the creditors as per clause (a) of sub-section (1) of section 130, in Form D.  
(2) The Adjudicating Authority may direct the bankruptcy trustee to issue the notices referred to in sub-rule (1), instead of issuing such notices itself.
11. **Statement of financial position.** — The statement of financial position referred to in sub-section (2) of section 129 shall be submitted by the bankrupt, in Form E.
12. **Claim with proof.**— (1) A creditor shall submit a claim with proof to the bankruptcy trustee on or before the last date mentioned in the public notice, in Form F.  
(2) Form F 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-rule (1) within the time stipulated in the public notice, may submit such proof to the bankruptcy trustee till the final date referred to in sub-section (2) of section 176.  
(4) The creditor shall bear the costs relating to the proof of claim.
13. **Notice of dividend.**— (1) The notice of dividend as per clause (a) of sub-section (1) of section 176 shall contain the following particulars: —
  - (a) the date on which the dividend is proposed to be distributed;
  - (b) the list of creditors who shall be entitled to a dividend;
  - (c) the amount of dividend for each creditor under clause (b);

- (d) request for any details required from the creditors for the distribution of dividend, and the last date for receipt of such information;
  - (e) the last date by which the creditors must establish their claim against the estate with the bankruptcy trustee; and
  - (f) a statement confirming that no further dividends shall be declared.
  - (2) The notice under clause (b) of sub-section (1) of section 176 shall provide the reasons for not declaring dividend.
  - (3) The notice of dividend under sub-section (1) section 176 shall be sent thirty days prior to the date specified for the distribution of dividend.
  - 14. Copy of application.**— On the appointment of the bankruptcy trustee, nominated by the Board, under sub-section (5) of section 125 by the Adjudicating Authority, a copy of the application as referred to in rule 6 and rule 7, if not provided earlier, shall be provided to such bankruptcy trustee by the Adjudicating Authority within three days of the appointment.
  - 15. Restriction on bankrupt.**—The restriction on the bankrupt under clause (d) of sub-section (1) of section 141 shall be applicable for any financial or commercial transaction of one lakh rupees and above.
  - 16. Filing of application and documents.**—(1) Till such time, rules of procedure for conduct of proceedings under the Code are notified, the applications under rules 6 and 7 shall be filed and dealt with by the Adjudicating Authority in accordance with —
    - (i) rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 made under section 469 of the Companies Act, 2013 (18 of 2013); or
    - (ii) rule 3 of the Debt Recovery Tribunal (Procedure) Rules, 1993 made under section 36 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) and regulations 3, 4, 5 and 11 of the Debt Recovery Tribunal Regulations, 2015 made under section 22 of the Recovery of Debts and Bankruptcy Act, 1993, as the case may be.
  - (2) The application and accompanying documents shall be filed in electronic form, as and when such facility is made available and as directed by the Adjudicating Authority:
- Provided that till such facility is made available, the applicant may submit accompanying documents, and wherever they are bulky, in electronic form, in scanned, legible portable document format in a data storage device such as compact disc or a USB flash drive acceptable to the Adjudicating Authority.

### FORM A

[See rule 6(1)]

#### APPLICATION BY GUARANTOR TO INITIATE BANKRUPTCY PROCESS.

[Under rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

[Date]

To,

The Adjudicating Authority

[Address]

From,

[Name and address of the guarantor]

In the matter of [name of the guarantor]

**Subject:** Application to initiate bankruptcy process in respect of [name of the guarantor].

Madam/Sir,

I/ We hereby submit this application to initiate a bankruptcy process in respect of [name of guarantor]. The details for the purpose of this application are set out below-

**Part I**

PARTICULARS OF THE GUARANTOR					
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 (i) Present (ii) Permanent (iii) Business				
5.	Occupation/ Business/ Profession				
6.	Annual income in the preceding year (in Rupees)				
7.	List of associates of the <i>guarantor</i> , including relatives, who may be creditors	Name	Age	Address	
8.	Bank account details (Joint and Several)	Account number	IFSC code	Name of Branch and Branch address	
9.	Identification numbers	Aadhaar number	Passport number	PAN	GSTIN
10.	Contact number(s)	Home	Mobile	Business	
11.	List of assets of guarantor and immediate family as on the application date. Note: this will include all assets, irrespective of them being excluded assets. Please mention which assets are the 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			
		Jewellery			
		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 and Directors Identification Number) and CIN of such companies	
13.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other)	
14.	Details regarding guarantee given by guarantor (in addition to information in serial number 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 the corporate debtor	
	Whether corporate debtor is an associate as per section 79(2) of the Code (state how)	
	Any securities held in corporate debtor for whom guarantee is given	
15.	Where the guarantor is not a resident in India, the name and address of the person authorized to accept the service of process on guarantor's behalf, along with the authority	

### 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 GUARANTOR		
1.	Name of business and form of business	
2.	Details of registration, if any	
3.	Description of business	
4.	Business address	
5.	Annual income of guarantor	
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	

7.	Commencement date of business and date of close of operations (if applicable)	
8.	Address where books of accounts / accounting records are kept (including soft copy records)	
9.	Whether employees to whom debt owed (state yes or no, and if yes, details to be mentioned in Part III)	

**Part - III**

PARTICULARS OF DEBT [CREDITOR WISE, AS APPLICABLE]				
1.	Name(s) of creditor(s)			
2.	Address	Present	Permanent	Business
3.	Total debt (including any interest or penalties)			
4.	Amount of debt in default			
5.	Interest or penalties, if any			
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 guarantor in respect of excluded debts	I / guarantor/ hereby state that the debt(s) for which the bankruptcy process application is filed		

		<p>does not include any-</p> <p>(i) liability to pay fine imposed by a court or tribunal;</p> <p>(ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;</p> <p>(iii) liability to pay maintenance to any person under any law for the time being in force;</p> <p>(iv) liability in relation to a student loan;</p> <p>(v) any other debt prescribed under section 79(15)(e) of the Code.</p>
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**Part-IV**

<b>PARTICULARS OF &amp; DECLARATION BY INSOLVENCY PROFESSIONAL (IF PROPOSED TO ACT AS BANKRUPTCY TRUSTEE)</b>				
1.	Title and full name			
2.	Address	Present	Permanent	Business
3.	E-mail address(es)			
4.	Contact number	Home	Mobile	Business
5.	Declaration by insolvency 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 insolvency professional by <i>[name of applicant guarantor]</i> in connection with the proposed bankruptcy process of <i>[name of the guarantor]</i>.</p> <p>I hereby:</p> <p>(i) agree to accept appointment as the insolvency professional if an order of appointment is passed by the Adjudicating Authority;</p> <p>(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;</p> <p>(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>;</p> <p>(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>;</p>		



		<p>(v) affirm that I am eligible to be appointed as an insolvency professional in respect of the debtor in accordance with Regulation 3 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019;</p> <p>(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> <p>(Signature of the insolvency professional)</p>
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Yours sincerely,

Signature of guarantor / person authorized to act on behalf of the guarantor <i>[Please enclose the authorisation document if this application is being submitted on behalf of the guarantor]</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 bankruptcy, 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 \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
Applicant's signature.

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

1. All records of the insolvency resolution process in respect of the guarantor, including the following-
  - (i) Application for the insolvency resolution process;
  - (ii) Order(s) of the Adjudicating Authority-
    - (a) accepting / rejecting the application under serial number (i) above under section 100 of the Code, as the case may be;
    - (b) approving / rejecting the repayment plan under section 114 of the Code, as the case may be;
    - (c) declaring that the repayment plan has not been fully implemented under section 118 and entitling the debtor to apply for bankruptcy, as the case may be;
    - (d) any other order that may have been passed by the Adjudicating Authority in relation to the insolvency resolution process.
2. All documents mentioned in serial number 13 of Part III of this form.
3. Copy of the income tax returns with detailed computation of the income of the guarantor, or the firm, as the case may be, for the previous three years.
4. Copy of the personal guarantee contract.
5. Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891)
6. The latest and complete copy of the financial contract reflecting all amendments and waivers to date.
7. Copies of relevant ownership and title documents for all assets.
8. Copy of the authorisation, wherever required under this form.
9. Proof that the application fee has been paid.
10. Documentary evidence of all information sought in each entry for each part of the form.
11. A statement of affairs of the guarantor made up to a date not earlier than two days from the date of the application including the following information and supporting documents, namely-
  - (i) debtor's assets (inclusive of 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 guarantor to associates of the guarantor for the previous three years;
  - (iv) guarantees given in relation to any of the debts of the guarantor, and if any of the guarantors is an associate of the guarantor;
  - (v) financial statements with all annexures and schedules for the business owned by the guarantor, or of the firm in which the guarantor is a partner, as the case may be, for the previous three years, if applicable;
  - (vi) wealth tax statements filed by the guarantor, if any, for the previous five years.
  - (vii) Income statement of the guarantor, for the previous three years.
  - (viii) Payment of indirect taxes including GST for the previous three years.

**FORM B**

[See rule 7(1)]

**APPLICATION BY CREDITOR TO INITIATE BANKRUPTCY PROCESS**

[Under rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

[Date].....

To,

The Adjudicating Authority

[Address]

From,

[Name and address of the creditor]

In the matter of [name of the guarantor]

**Subject:** Application to initiate bankruptcy process in respect of [name of the guarantor] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Name of the creditor], hereby submits this application to initiate a bankruptcy process in the case of [name of guarantor]. 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 of creditor	Aadhaar number	CIN	PAN	GSTIN
5.	Address	Present	Permanent	Business	

**Part – II**

PARTICULARS OF THE GUARANTOR				
1.	Title and full name			
2.	Date of birth and e-mail address (to the extent known)			
3.	Any other name by which the guarantor 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 guarantor, 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 numbers	Aadhaar number	Passport number	PAN	GSTIN
10.	Contact number(s)	Home	Mobile	Business	
11.	List of assets of guarantor 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 and Director Identification Number) and CIN of such companies (to the extent known)				

13.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other) (to the extent known)	
14.	Details regarding guarantee given by guarantor (in addition to information in serial numbers 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.	Where the guarantor is not a resident in India, the name and address of the person authorised to accept the service of process on guarantor's behalf, along with the authority	

**Part-III**

<b>PARTICULARS OF DEBT</b>		
1.	Total debt (including any interest or penalties)	
2.	Amount in default	
3.	Date on which debt was due	
4.	Date on which default occurred	
5.	Nature of the debt	
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)	
7.	Unsecured debt (as applicable)	
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	
9.	Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor 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 (attach a copy)	
15.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	
16.	Statement by the secured creditor under section 123(2) of the Code	<p>Tick whichever is applicable-</p> <p><input type="checkbox"/> In the event a bankruptcy order accepting the application is passed by the Adjudicating Authority, I shall relinquish my security mentioned in serial number 6 for the benefit of all the creditors of the debtor.</p> <p><input type="checkbox"/> The application is only in respect of unsecured debt as per the details mentioned in serial number 7.</p>
17.	Statement by creditor in respect of excluded debts	<p>I [<i>creditor</i>] hereby state that the debt(s) for which the bankruptcy process application is filed does not include any-</p> <p>(i) liability to pay fine imposed by a court or tribunal;</p> <p>(ii) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;</p> <p>(iii) liability to pay maintenance to any person under any law for the time being in force;</p> <p>(iv) liability in relation to a student loan;</p> <p>(v) any other debt prescribed under section 79(15)(e) of the code.</p>

**Part-IV**

<b>PARTICULARS OF &amp; DECLARATION BY INSOLVENCY PROFESSIONAL (IF PROPOSED TO ACT AS BANKRUPTCY TRUSTEE)</b>				
1.	Title and full name			
2.	Address	Present	Permanent	Business
3.	E-mail address(es)			
4.	Contact number	Home	Mobile	Business
5.	Declaration by insolvency 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 insolvency professional by <i>[name of applicant guarantor]</i> in connection with the proposed bankruptcy process of <i>[name of the guarantor]</i>.</p> <p>I hereby:</p> <ul style="list-style-type: none"> <li>(i) agree to accept appointment as the insolvency professional if an order of appointment is passed by the Adjudicating Authority;</li> <li>(ii) state that the registration number allotted to me by the Board is <i>[insert registration number]</i> and that I am currently qualified to practice as an insolvency professional;</li> <li>(iii) disclose that I am currently serving as an insolvency professional / resolution professional / liquidator/ bankruptcy trustee in <i>[insert number and details of the proceedings]</i>;</li> <li>(iv) certify that there are no disciplinary proceedings pending against me with the Board or <i>[name of the insolvency professional agency he is a member of]</i>;</li> <li>(v) affirm that I am eligible to be appointed as an insolvency professional in respect of the debtor in accordance with regulation 3 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019;</li> <li>(vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 <i>[insert disclosures, if any]</i>.</li> </ul> <p>(Signature of the insolvency professional)</p>		

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 records of the insolvency resolution process in respect of the guarantor, including the following-
  - (i) Application for the insolvency resolution process;
  - (ii) Order(s) of the Adjudicating Authority-
    - (a) accepting / rejecting the application under serial number (i) above, as the case may be;
    - (b) approving / rejecting the repayment plan, as the case may be;
    - (c) entitling the creditor to apply for bankruptcy;
  - (iii) any other order that may have been passed by the Adjudicating Authority in relation to the insolvency resolution process.
2. All documents mentioned in serial number 15 of Part III of this form.
3. Copy of the income tax returns with detailed computation of the income of the guarantor, 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 authorisation, 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 guarantor 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 guarantor at any point in time, if available.
9. Documentary evidence of all information sought in each entry for each part of the form.

**Form C**

[See rule 9 (1)]

**Public Notice**

[Under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

**FOR THE ATTENTION OF THE CREDITORS OF [Full Name and title of Bankrupt (personal guarantor of (name of corporate debtor))]**

Notice is hereby given that the [Debt Recovery Tribunal/National Company Law Tribunal in case of bankrupt under section 60 of the Code] has ordered the commencement of a bankruptcy process against the [name of bankrupt] residing at [last known address of the bankrupt] on [bankruptcy commencement date].

The creditors of [name of the bankrupt], are hereby called upon to submit their claims with proof on or before [insert the date falling seven days from date of issue of public notice] to the bankruptcy trustee at [address].

The last date for submission of claims of creditors shall be [date]. The creditors may submit their claims through electronic means, or by hand or registered post or speed post or courier.

Additional details of the bankruptcy trustee: [Name, last known address, e-mail address, phone number and the registration number of the bankruptcy trustee]

**Note:** Submission of false or misleading claims with proof shall attract penalties or imprisonment in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and any other applicable laws.

Date and Place:



**FORM D**

[See rule 10(1)]

**NOTICE TO CREDITOR**

*[Under rule 10 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019]*

To

[Name and address of creditor]

From

[Adjudicating Authority]

Notice is hereby given that the [Debt Recovery Tribunal/National Company Law Tribunal in case of bankrupt under section 60 of the Code] has ordered the commencement of a bankruptcy process against the [title and full name of bankrupt] residing at [last known address of the bankrupt] on [bankruptcy commencement date].

You have been mentioned as a creditor of the bankrupt as per the documents submitted in the application for the bankruptcy process. You are hereby called upon to submit a claim with proof of the debt due to you on or before [insert the date falling seven days from date of issue of public announcement] to the bankruptcy trustee at [address].

The last date for submission of claims shall be [date]. You may submit your claim through electronic means, or by hand or registered post or speed post or courier.

Additional details of the bankruptcy trustee: [Name, last known address, e-mail address, phone number and the registration number of the bankruptcy trustee]

**Note:** Submission of false or misleading claims with proof shall attract penalties or imprisonment in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and any other applicable laws.

Date and Place:

**FORM E**

[See rule 11]

**STATEMENT OF FINANCIAL POSITION OF BANKRUPT**

*[Under rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019]*

**Part I**

RELEVANT PARTICULARS				
1.	Full name of bankrupt			
2.	Address	Present	Permanent	Business
3.	Bank account details (Joint and Several)	Account Number	IFSC Code	Name of Bank and Bank Branch

4.	List of assets of bankrupt and immediate family as on the application date for the previous three years.  <b>Note:</b> this will include all assets of bankrupt, irrespective of them being excluded assets. Please mention the assets which may be excluded assets.	Immovable property	Description	Estimated value	Excluded asset or not
		Movable property	Description	Estimated value	Excluded asset or not
		Vehicles			
		Shares in listed companies			
		Shares in other companies			
		Life insurance policy			
		Jewellery			
		Pension policy			
		Investment in mutual funds			
		Investment in other funds			
		Investment in partnerships and other business concerns			
		Any other property not covered above			
5.	The following information is required in relation to the guarantee given by the guarantor:				
i.	Name of corporate debtor for which guarantee is given				
ii.	Any current or past position held in the corporate debtor				
iii.	Whether corporate debtor is an associate				
iv.	Any securities held in corporate debtor for whom guarantee is given				

6.	Name and address of person resident in India authorised to accept the service of process on bankrupt's behalf (if applicable)	
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**Part II**

<b>FINANCIAL INFORMATION</b>		
1.	Statement of assets and liabilities for the previous three years	
2.	Secured and unsecured debts, with complete details of the creditors including name and postal address, the total amount due, amount in default and details of the security, for the previous three years	
3.	Details of the debts owed to associates of the bankrupt, for the previous three years	
4.	Details of guarantees given in relation to any of the debts of the guarantor, and if any of the guarantors is an associate of the guarantor	
5.	Details of the business owned by the bankrupt, or of the firm in which the bankrupt is a partner, as the case may be, for the previous three years, if applicable	
6.	Details of the wealth tax statements filed by the bankrupt, if any, for the previous five years.	
7.	Details of trusts held by bankrupt and/or immediate family of bankrupt	
8.	Any other relevant information	

**FORM F****[See rule 12(1)]****CLAIM WITH PROOF BY A CREDITOR**

*[Under rule 12 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019]*

*[Date]*

To

The Bankruptcy Trustee

*[Name of the Bankruptcy Trustee]*

*[Address as set out in public notice]*

From

*[Name and address of the creditor]*

**Subject:** Submission of claims with proof.

Madam/Sir,

*[Name of the creditor]*, hereby submits this proof of claim in respect of the bankruptcy process in the case of *[name of bankrupt]*. The details for the same are set out below:

S. No.	Particulars				
1.	Title and full name of creditor				
2.	Identification number of creditor	Aadhar	PAN	CIN	GSTIN
3.	Address	Present	Permanent	Business	
4.	Total amount of claim  (Including any interest as at the bankruptcy 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 <b>Note:</b> ‘Dispute’ will include suits, arbitration proceedings, and other judicial proceedings contesting the existence or validity of the debt.				
7.	Details of how debt was incurred and the date when debt incurred				
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the bankrupt 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)				

<b>12.</b>	For secured creditors only	
	Tick whichever is applicable – <input type="checkbox"/> security interest is being enforced <input type="checkbox"/> Security interest is being relinquished.	
	If security is being relinquished, please complete the statement of relinquishment of security interest in the column on the right.	I, <i>[name of secured creditor]</i> , hereby release and relinquish my security interest and any claim, right, lien or interest in any property based on such security interest, other than the right to receive dividends as per the Code, in <i>[insert description of the subject and nature of security interest]</i> , which was created by <i>[name of bankrupt]</i> , on <i>[insert date of creation of security interest]</i> on account of <i>[insert description of circumstances leading to creation of security interest]</i> . <i>Signature of the secured creditor, or the authorised signatory.</i>
	If security is being realised, provide details of any action that has been taken to enforce / realise the security.	
	If security is being realised, specify balance amount of debt which is being claimed.	
<b>13.</b>	List of documents attached to this proof of claim in order to prove the existence and non-payment of claim due to the creditor	
<b>14.</b>	Details of bank account to which the share of creditor's proceeds from bankruptcy can be deposited.	
<b>Signature of creditor or person authorised to act on his behalf</b> <i>[Please enclose the authority if this is being submitted on behalf of a creditor]</i>		
<b>Name in block letters</b>		
<b>Address of person signing</b>		

**DECLARATION**

I, [*name of claimant*], currently residing at [*insert address*], declare and state as follows:

1. [*Name of bankrupt*], the debtor was, at the bankruptcy 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 bankrupt and the creditor which may be set-off against the claim.]*

Date:

Place:

(Signature of the claimant)

**VERIFICATION**

I, [*Name*], the claimant hereinabove, do hereby verify that the contents of this claim with proof are true and correct to my knowledge and belief and no material facts have been concealed therefrom.

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

(Claimant's signature)

[F. No. 30/21/2018-Insolvency Section]  
GYANESHWAR KUMAR SINGH, Jt. Secy.

## **A synopsis of the provisions of IBC relating to personal guarantors to corporate debtors**

### **Introduction:**

You may be aware that the Central Government has recently notified the Rules relating to personal guarantors to corporate debtors have also been brought in by the Government. Quickly following suit, Insolvency and Bankruptcy Board of India (IBBI) has also notified the relevant Regulations governing the insolvency resolution and bankruptcy of the personal guarantors to corporate debtors.

In this synopsis, the provisions of law governing this category of “personal guarantors” are highlighted. Provisions relating to “insolvency resolution process” have been addressed herein. Procedural aspects relating to “bankruptcy process” of the personal guarantors to corporate debtors are not covered in this article.

Guarantees play a very important role in business development as it takes the form of a security for the debts. They help finding scarce resources at competitive rates which would have been otherwise not possible for a borrower to raise. Guarantees have been leveraged by several top business houses to fund business growth. Guarantors can be corporate entities or individuals / firms. Persons (individuals, partners of a firm) when they choose to stand in guarantee for a corporate debtor in the event of its failing to meet a credit obligation have now been brought under the ambit of IBC. While the matters involving corporate guarantors to corporate debtors have been dealt with under the already extant provisions of IBC, the procedural aspects relating to “insolvency resolution process” for such personal guarantors to the corporate debtors are the focus of this analysis.

IBC defines Corporate guarantor and personal guarantor as below:

*Sec.5(5A)*

***“corporate guarantor” means a corporate person who is the surety in a contract of guarantee to a corporate debtor.***

*Sec.5(22)*

***“personal guarantor” means an individual who is the surety in a contract of guarantee to a corporate debtor.***

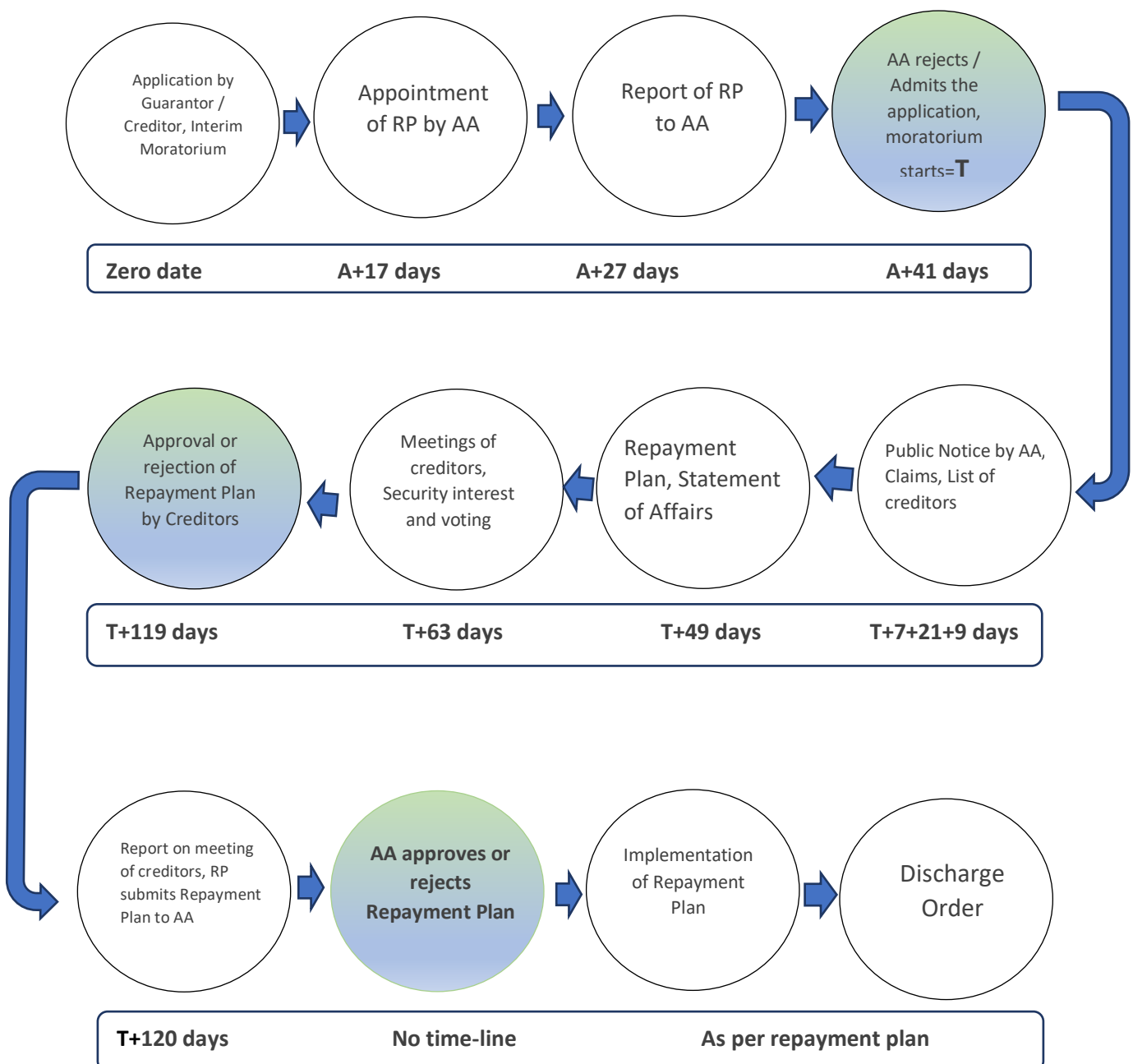
Sec.2 of IBC speaks about applicability of the provisions of Insolvency and Bankruptcy Code to various persons. The Central Government amended this section to bring in “personal guarantors to corporate debtors” way back on 18<sup>th</sup> January 2018. Since then, sizable ground work has been done by the Government to lay down the relevant subordinate provisions in line with the Code.

The Central Government while notifying the provisions of IBC relating to personal guarantors, has made it clear that the provisions of Part III (Sections 78 to 187) shall apply only in so far as they relate to personal guarantors to corporate debtors.



## Insolvency Resolution Process of Personal Guarantors

A diagrammatic view of the insolvency resolution process in respect of personal guarantors to corporate debtor is given below:



Important terms defined by IBC and Regulations are given below:

**Associate:**

Sec.79(2) of IBC speaks about who are all the “associates” of the “debtor” (read: guarantor). It is interesting to note that the definition ropes in wider array of persons having connection with the debtor (guarantor).

Following persons are considered as “associate” of the debtor:

- a) A person who belongs to the immediate family of the debtor. [ Sec.79(17) defines “immediate family” of the debtor as his spouse, dependent children and dependent parents.]
- b) A person who is a relative of the debtor or a relative of the spouse of the debtor;
- c) A person who is in partnership with the debtor;
- d) A person who is a spouse or a relative of any person with whom the debtor is in partnership;
- e) A person who is employer of the debtor or employee of the debtor;
- f) A person who is a trustee of a trust in which the beneficiaries of the trust include a debtor, or the terms of the trust confer a power on the trustee which may be exercised for the benefit of the debtor; and
- g) A company, where the debtor or the debtor along with his associates, own more than fifty per cent of the share capital of the company or control the appointment of the board of directors of the company.

Explanation – For the purpose of Sec.79(2), “relative”, with reference to any person, means anyone who is related to another, if –

- i. they are members of a Hindu Undivided Family
- ii. one person is related to the other in such manner as may be prescribed.

(Refer explanation to Sec 5(24A))

**The relevance of “associates”**

It is seen from the provisions that the definition of “associate” gains importance from two perspectives:

- a. The RP, either proposed by the guarantor or the creditor, cannot be an associate of the guarantor.
- b. An associate, who is also a creditor to the guarantor, shall not be entitled to vote in a meeting of the creditors.

- c. The assets of immediate family members of the guarantor who are also included in the definition of associates, will not be included in the resolution process. Though there is no specific provision in the Code or Rules or Regulations, the Form “A” – application by a guarantor to Adjudicating Authority – Part I – Sl. No.11 requires the applicant to “list the assets of the guarantor and immediate family as on the application date. (Note: This will include all assets of the guarantor, irrespective of them being excluded assets. Please mention which assets may be excluded assets.”

**However, the assets of the immediate family are not covered anywhere in the IBC except in the case of preferential transactions during bankruptcy proceedings. The intention of the law-makers might have been to get details of the assets of the immediate family as those assets could be the subject of an investigation under the provisions of Sec.164,165 and 167 being undervalued, preferential or extortionate transactions.**

### **Excluded Assets**

Sec.79(14) of IBC defines excluded assets. It predominantly includes unencumbered tools, books, vehicles, etc. as are necessary for the debtor for the purpose of his employment, business or vocation and also includes unencumbered furniture, household items, personal ornaments which cannot be parted with in accordance with religious usage (not exceeding Rs.1 lakh value) . Also, unencumbered single dwelling unit owned by the debtor (if it is in rural area – not more than Rs.10 lakhs and in urban area, not more than of Rs.20 lakhs value). (Rule 5).

### **Questions on excluded assets**

What happens if the value of a single personal ornament is more than Rs.1 lakh and it is the “mangal sutra” which has its prime religious usage by married Hindu women? Though it is unencumbered asset of the guarantor’s immediate family, would it be part of the “repayment plan”? Similarly, the value of dwelling unit – Rs.10 lakhs in rural area and Rs.20 lakhs in urban area – is nowhere near reality. Most of the cases, the property is indivisible. In such a situation, whether the whole dwelling unit can be retained by the guarantor (debtor) or he should cough up the balance amount to the kitty for repayment to the creditors? It appears the “Resolution Professionals” in these cases would have to face tremendous challenges, sentimental pressures and emotional situations.

## **Excluded Debt**

Sec.79(15) of IBC defines “excluded debt” as –

- a. Liability to pay fine imposed by a court or tribunal
- b. Liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;
- c. Liability to pay maintenance to any person under any law for the time being in force;
- d. Liability in relation to a student loan; and
- e. Any other debt as may be prescribed.

The definition of excluded debt assumes significance as an application filed by a personal guarantor (debtor) under Sec.94 can only be in respect of debts other than excluded debts and therefore, it appears he is liable to settle those excluded debts in full and he cannot seek any settlement plan under the provisions of IBC. It is not clear whether the repayment plan proposed by the Personal Guarantor should take care of full payment of all these debts out of the realisation of the assets of the Personal Guarantor. Also, the question of how to estimate the amount payable as maintenance to any person and to provide for the same is not answered.

## **Repayment plan:**

Sec.79(20) - “repayment plan” means a plan prepared by the debtor in consultation with the resolution professional under Sec.105 containing a proposal to the committee of creditors for restructuring of his debts or affairs.

Repayment plan is the most important document arising out of the insolvency resolution process of the personal guarantor. The Code envisages that this repayment plan be prepared by the personal guarantor in consultation with the RP. The repayment plan may authorise or require the RP to carry on the debtor’s business on his behalf or in his name, realise the assets of the debtor or administer or dispose of any funds of the debtor. The repayment plan shall include a justification on the terms and reasons on the basis of which the creditors may agree upon the plan and shall provide for payment of fees to the resolution professional. (Sec.105 read with Reg.17) A repayment plan may provide for early discharge of the guarantor or on complete implementation of the repayment plan. [Sec.119(2)]

## **Discharge order**

“Discharge order” means an order passed by the Adjudicating Authority discharging the debtor under Sections 92 (fresh start process), 119 (insolvency resolution process) and section 138 (bankruptcy process) as the case may be. However, for our discussions, the discharge order under Sec.119 is relevant.

Having seen the relevant definitions, let us now move on to the insolvency resolution process envisaged for personal guarantors to corporate debtors:

## **Notable process oriented comments:**

### **Action before Application by Creditor:**

In the case of an application being filed by a creditor against the personal guarantor under Sec.95 (Rule 7), it is provided under Sec. 95(4) that the application shall be accompanied by documents evidencing a notice of demand issued to the guarantor (debtor) and failure to pay the debt within a period of fourteen days fulfils the criteria for admission.

### **Who is the Adjudicating Authority??**

The adjudicating authority in relation to an insolvency resolution and liquidation proceedings of a corporate debtor shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate debtor is located.

Keeping in view the administrative convenience and substantive control over the connected proceedings, IBC vide Sec.60(2) provides that “notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process of a corporate debtor is pending before a NCLT, an application relating to the insolvency resolution or liquidation or bankruptcy process of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such NCLT.

To clarify this point, an example is given below:

Party	Regd. Office located in	If CIRP or Liquidation process is pending against the CD	Otherwise
		Proceeding against the corporate guarantor to be filed in NCLT at	
Corporate Debtor	Chennai	Chennai	Cochin
Corporate Guarantor	Cochin		

**Where the CD is not under CIRP, but there is a default, personal guarantee is invoked and personal guarantor wants to resolve the issue:**

In such a situation, the personal guarantor can make an application in “Form A” to the Debt Recovery Tribunal (in the territory where he lives) for an insolvency resolution. If the creditors accept the repayment plan, well and good. Otherwise, the creditors may initiate a bankruptcy proceedings against the personal guarantor. The creditors may also simultaneously initiate action against the corporate debtor in the respective NCLT.

Once the corporate debtor is also admitted into the CIRP (through Sec.7 or 9 or 10 of IBC as the case may be) the proceedings lying before the DRT shall be shifted to the respective NCLT wherein the proceeding against the corporate debtor lies.

### **Why Interim Moratorium (Sec.96)**

It is generally believed that the creditors may rush to sell off the assets of the guarantor, if they were in possession. Therefore, the law makers have thought of a provision to provide a calm period to the personal guarantors. The interim moratorium shall commence on the date of the application in relation to all the debts and shall cease on the date of admission of the application.

However it is to be noted that the most important provision of alienating the assets of the Personal Guarantor which is provided for in the section relating to Moratorium (Sec101) is missing under the heading “Interim Moratorium”.

### **Appointment of Resolution Professional prior to adjudication by the Adjudicating Authority (Sec.97)**

This is a notable departure from the process so far practiced in the case of CIRP of a Corporate Debtor. There is no system of appointment of Interim Resolution Professional.

The Resolution Professional appointed (either opted by the applicants themselves or brought in by the AA) will be provided with a copy of the application for insolvency resolution process.

#### **Submission of Report by the Resolution Professional**

The Resolution Professional appointed under Sec.97 shall, within 10 days of his appointment submit a report supported with reasons to the AA recommending for approval or rejection of the application. This report should be prepared by the Resolution Professional after following a due process which is practiced in the NCLT today for ascertaining whether the debt existed, it was due and there was no dispute existed in connection with that debt before adjudicating on the application for admission. It is to be noted that a copy of the report is to be provided to the applicant also. However, it is made very clear that the orders of the AA will be independent of the outcome of this report.

#### **Who issues Public Notice?? (Sec.102)**

The public notice in the case of insolvency resolution process of a personal guarantor to the corporate debtor is to be made by the Adjudicating Authority in contrast to the public announcement being issued by the IRP in the case of a corporate debtor admitted into insolvency resolution process. A copy of the notice should also be affixed in the premises of AA and placed on the website of the AA.

#### **Preparation of list of creditors (Sec.104)**

In the process of CIRP for a Corporate Debtor, the list of creditors will be compiled from the claim submitted by the creditors. But in interim resolution process of Personal Debtor to a Corporate Debtor, the list of creditors shall be prepared by the Resolution Professional both from the information disclosed in the application filed by the debtor under section 94 or 95 as the case may be and claims received under Sec.102.

#### **Short notice for convening meeting of creditors**

Though the regulations are not saying it aloud, it appears there is an intention to provide a shorter notice of 48 hours to hold a meeting of the creditors after the first meeting which has to be convened with 14 days' notice.

## Approval of repayment plan – whether e-voting should be conducted or not?

### Regulation 15 (read with Sec.111) - Voting by Creditors

#### Sec.111 of IBC - Approval of repayment plan by creditors -

*"The repayment plan or any modification to the repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors."*

The above provision makes it clear that the repayment plan or any modification thereof should be approved by a majority of more than 3/4th in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors. In other words, the voting by the creditors present in person or by proxy alone needs to be reckoned. There is no mentioning anything of "e-voting" in respect of creditors not present or present but did not vote.

If one reads the abovesaid section, probably the importance of getting the consent of "more than three-fourth" of the creditors present for a repayment plan or modification of it comes out clearly. However, it may be noted that in respect of any other matters, the threshold for decision making is "more than fifty percent" as specified in Reg.11(6) which says "Unless otherwise provided in the Code, any decision of the creditors shall require approval of more than fifty percent of voting share of the creditors who voted.

Reading further of **Reg.15 - Voting by creditors**, the resolution professional shall take a vote of the creditors present in the meeting and also after circulation of the minutes of the meeting, the resolution professional shall seek a vote from the creditors who were not present in the meeting or did not vote at the meeting by electronic means. The **Reg.15 - Voting by creditors** is speaking about the voting process in respect of "any item listed for voting" after discussions. Decision on "repayment plan" is also one of the items listed for voting. Should the RP proceed for e-voting of creditors not present or who did not vote in respect of the resolution relating to "repayment plan"? If one goes by Sec.111, there is no need to consider voting by creditors not present in the meeting. But for an important subject, it perhaps is not the intention of the law makers. This is all the more relevant because, the quorum required for a meeting is only 33% and in case quorum is not present, the creditors present on the next day shall form quorum irrespective of their being less than 33%. And, out of the creditors present, voting by majority of more than 75% is required for approval of the repayment plan or its modification.

If the intention of the law-makers is to get the consent of more than 75% of all the



creditors, the language of section 111 would have been different. It only says that voting of creditors present in person or by proxy to be considered and has not talked about seeking voting by creditors not present or who did not vote.

**Approval of repayment plan being a very important item, we are of the view that the e-voting by creditors should also be considered. In which case, an amendment to Sec.111 may be warranted.**

### **Flow-chart of the insolvency resolution process**

For the purpose of a better understanding, the process of insolvency resolution of personal guarantors to corporate debtors can be split into three phases:



## Phase 1

### Insolvency Resolution Process of Personal Guarantors (PG) to Corporate Debtors

Sec.94/Rule 6 (Form A)Application by Debtor (PG) OR Sec.95/Rule 7 (Form C) Application byCreditor			Time Line
Through RP		Directly	
	TO BE FILED WITH NCLT		Day 1
	Sec.96: Interim Moratoriumcommences on the date of filing of the application		
Sec.97 (1): NCLT within 7 days of the application directs IBBI to confirm that there are no disciplinary proceeding against RP	IBBI	Sec.97(3): NCLT within 7 days of the application directs IBBI to nominate a RP for the IRP	Day 8
IBBI shall confirm / reject / nominate RP the within 7 days of direction from NCLT		IBBI shall nominate RP the within 10 days of direction from NCLT	Day15/18
	APPOINTMENT OF RP		
	Sec.97(5): NCLT shall by an order appoint RP within 10 days of recommendation / nomination by IBBI		Day 15/18
	SUBMISSION OF REPORT BY RP		
	Sec.99: RP within 10 days of his appointment shall submit a report to NCLT recommending for approval / rejection of the application		Day 25/28
	WITHDRAWAL OF APPLICATION BEFORE ADMISSION		
	Rule 11: NCLT may permit withdrawal of application submitted before its admission, on the request made by the applicant		
	ADMISSION / REJECTION OF APPLICATION		
	Sec.100: NCLT within 14 days of submission of report by RP, pass order either admitting or rejection the application		Day 39/42
	Moratorium under Sec.101 commences if admitted		
	If the application of guarantor is rejected on the basis of report of RP that a guanrantor made application with intention to defraud creditors / RP, the creditors, the AA shall record in the order that the creditor is entitled to file for bankruptcy proceedings.		
	WITHDRAWAL OF APPLICATION AFTER ADMISSION		
	Rule 11: NCLT may permit withdrawal of application submitted after its admission, on the request made by the applicant, if 90% of the creditors agree to such withdrawal		



## Phase 2

### Public announcement and claims

AA shall issue a public notice within 7 days of admission of the application, inviting claims from all creditors within 21 days of such issue. Notice to be published in one English and one vernacular newspaper in the State where debtor resides. Notice shall be affixed in office and website of NCLT

Claims to be submitted in Form B. Creditors to provide personal information and such particulars as may be prescribed.

RP to prepare List of Creditors within 30 days of public notice. List to contain names of creditors, amount claimed, amount admitted, security interest. List to be given to the guarantor, present it in the meeting, file a certified copy with AA along with repayment plan.

### Statement of affairs

RP shall prepare a State of Affairs (SOA) of the guarantor for presenting it in the meeting of creditors. This is similar to Information Memorandum in a CIRP.

The SOA shall include information for preceding three financial years and current financial year in respect of:

- a. Assets and liabilities of the guarantor
- b. Details of excluded assets and excluded debts
- c. Income tax returns filed
- d. List of creditors – secured and unsecured
- e. Debts owed by guarantor to his associates
- f. Guarantees in relation to his debts
- g. Financial statements of business owned by guarantor



## Repayment Plan

The debtor in consultation with RP shall prepare repayment plan. To contain proposal to the creditors for restructuring the debts or affairs.

At the request of the RP, the AA may issue instructions for the purpose for conducting negotiation between the debtor and creditors and for arriving at a repayment plan (Sec.100(2))

Repayment Plan may authorise RP to carry on the business of the debtor, or administer or dispose of the funds.

To include justification for the terms of the plan and reasons based on which the creditors may agree for the plan.

To provide for payment of fees to Resolution Professional

RP to submit the repayment plan along with his report on such plan to AA within 21 days of the last date for submission of claims.

The RP report shall include that the repayment plan is in compliance with the laws, reasonable prospect of being approved and implemented, there is a necessity to summon meeting of creditors to consider the repayment plan. Date, time and place of the meeting to be specified. Meeting to be held after 14 days of submission of the report but not later than 28 days.

## Meetings of creditors and voting

No distinction of a financial or operational creditor.

Voting share shall be in proportion to debt owed to such creditor.

1<sup>st</sup> meeting RP shall convene meetings with 14 days notice.

The voting share of creditors shall be to the extent of the unsecured debt.

The secured creditors shall forfeit their security interest during the period of repayment plan.

Alternatively, they should give an affidavit stating that they will exercise their voting only to the extent of unsecured debt.



**Approval of  
Repayment Plan  
by creditors**

**RP shall place before the creditors' meeting the following:**

- a. Repayment plan**
- b. Statement of Affairs**
- c. Report of RP on repayment plan**

**Sec.111 states that a repayment plan or any modification to a repayment plan has to be approved by a majority of more than three-fourths in value of the creditors present in person or by proxy and voting on the resolution.**

**RP shall file the repayment plan, as approved by the creditors, along with his report with the Adjudicating Authority or or before completion of 120 days from the resolution process commencement date. (Rule 19)**

**RP shall provide copies of documents filed with AA to the guarantors and the creditors within 3 days of such filing.**

**Phase 3**

**Approval of  
Repayment Plan  
by Adjudicating  
Authority**

**The Adjudicating Authority shall by an order approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by RP. The AA may also direct the RP to consider modifications in the repayment plan by convening a meeting of the creditors.**

**RP shall be responsible for ensuring the implementation of the repayment plan.**

**If there is any failure in implementation of the repayment plan, RP shall bring it to the notice of the Adjudicating Authority by way of a notice.**

**On completion of the implementation of the repayment plan, RP shall file a report with the AA. On the basis of this, the AA will issue a Discharge Order. The discharge order shall discharge the debtor and no other person from the debts.**

**If the AA rejects a repayment plan, both the guarantors and creditors shall be entitled to apply for bankruptcy proceedings.**

### Timelines after admission of application under Sec.94 or 95

To have an idea on the activity-wise timelines, the following table may be referred to:

Section Ref.	Activity	Time-line
Sec.100	Admission by Adjudicating Authority	T
Sec.101	Moratorium kicks in	T+180 days**
Sec.102	Public Notice by AA	T+7 days
Sec.102	Last date for submission of claims	T+28 days
Sec.104	List of Creditors to be prepared by RP	T+37 days
Sec.106	RP's Report on Repayment Plan	T+49 days
	Notice calling for meeting of creditors – 14 days' notice to be given	T+49 days
	1 <sup>st</sup> meeting of the Creditors	T+63 days
	Approval of Repayment Plan	
Sec.112	Report of Meeting of Creditors	
	Last date for submission of Repayment Plan approved by creditors to Adjudicating Authority	T+120 days
Sec.114	Approval of Repayment Plan by Adjudicating Authority	No timeline
Sec.116	Implementation & supervision of Repayment Plan	No timeline
Sec.119	Discharge Order	No timeline

\*\* T+180 days or till the date the Adjudicating Authority passes an order on repayment plan under Section 114 of IBC, whichever is earlier.

#### To sum up:

Outcome of these new regulations relating to personal guarantors to corporate debtors needs to be seen after some time. The volume of cases under this category is expected to be huge though the financial creditors may be circumspect before launching the proceedings before DRT / NCLT. The personal guarantors to corporate debtors may raise objections before High Court / Supreme Court to stall the proceedings under IBC taking plea that the failure of the corporate debtor was due to business reasons and their personal assets should not be subjected to recovery for this reason so long as there has not been any diversion of funds. Legal battles may ensure before results are seen!!!



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RESEARCH FOUNDATION

## **Contributors:**



**S.Rajendran**  
**B.Com.,FCS.,FCMA,CAIIB,DCG(ICS)**  
**Registered Insolvency Professional**  
**Director & Co-Founder**  
**CREATE & GROW Research Foundation**  
**Chennai**



**N.Nageswaran**  
**B.Com., CAIIB**  
**Registered Insolvency Professional**  
**Chennai**



**S.Srinivasan**  
**B.Sc.,FCS,DCRI(ICS)**  
**Chairman & Co-Founder**  
**CREATE & GROW Research Foundation**  
**Chennai**

4<sup>th</sup> January 2020

**Comparison of IBC provisions relating to insolvency resolution of a  
Corporate Debtor vis-à-vis Personal Guarantor to Corporate Debtor**

As the readers may be aware, the provisions of IBC were notified in respect of a corporate debtor in early 2017. Much water has flown under the bridge. The corporate insolvency resolution process, shortly called CIRP, has seen several challenges and amendments, court-room battles and new dimensions emerging from several hundred decisions by various judicial forum. Bottom line: Only just about 160 resolution plans have been approved by the adjudicating authorities. They too are being subjected to litigation during the course of implementation.

Be that as it may, the newly introduced provisions relating to personal guarantors to corporate debtors also aim to provide some sort of resolution in the matter of insolvency of the personal guarantors wherein a “repayment plan” is proposed. An RP (please take note, there is **no IRP** here) is appointed even before the application is admitted by the adjudicating authority (NCLT or DRT). There is a committee of creditors but it consists of all creditors (financial, operational or other creditors). Well, there are some similarities and some differences.

We have tried to highlight some of the key process elements under CIRP of a corporate debtor as against Insolvency Resolution Process for Personal Guarantors in a way the context of both are better understood.

Sl. No.	Broad head	CIRP of a Corporate Debtor (CD)	Insolvency Resolution of a Personal Guarantor to CD
01	Application to Adjudicating Authority	Minimum amount of default is Rs. 1,00,000/-  Financial Creditor: Form 1 (Sec.7)  Operational Creditor: Form 5 (Sec.9)  Corporate Applicant: Form 6 (Sec.10)	Minimum amount of default is Rs. 1,000/-  Rule 6: Application by Guarantor: Form A (Sec.94)  Rule 7: Application by Creditor: Form C (Sec.95)
02	Proposing an IRP / RP	IRP may be proposed by the applicant in the application itself. A Financial creditor compulsorily has to propose an IRP.  In case IRP is not proposed by the applicant who is an operational creditor applicant. AA will give direction to IBBI to nominate a IRP within 10 days	IRP – No concept of IRP  RP shall be proposed by the Creditor or Guarantor himself.  In case RP is not proposed by the Guarantor/Creditors, AA will give direction to IBBI to nominate a RP within 10 days.





Sl. No.	Broad head	CIRP of a Corporate Debtor (CD)	Insolvency Resolution of a Personal Guarantor to CD
03	Appointment of IRP / RP	An IRP shall be appointed only at the time or after the admission of the application for commencing insolvency	No IRP. RP shall be appointed by AA even before admitting the application. In fact RP's recommendation is relied upon for admitting the application.
04	Fees to AA along with the application	Financial Creditor: Rs.25,000/- Operational Creditor: Rs.2,000/- Corporate Applicant: Rs.25,000/-	Guarantor: Rs.2,000/- Creditor: Rs.2,000/-
05	Procedure for admission of application	AA will admit the application by ascertaining the existence of default by the CD on the basis of Information utility.	Application filed by the Guarantor or the Creditor shall be admitted by AA on the basis of the report submitted by the RP
06	Withdrawal of application	(a) Before constitution of CoC: By applicant thro' IRP (Sec.12A Reg.30A (1)(a))  (b) After constitution of CoC: By applicant thro' IRP/RP, if 90% of voting share of the CoC agree to such withdrawal. (Sec.12A Reg.30A (1)(b))	(a) Before admission: On a request made by applicant (Rule 11)  (b) After admission: On the request made by the applicant, if 90% of the creditors agree to such withdrawal
07	Interim Moratorium	No concept of Interim Moratorium during CIRP.	From the date of filing of application till the date of admission. (Sec.96)
08	Moratorium	From the date commencement of insolvency resolution process until its completion (Sec.14)	180 days from the date of admitting the application (Sec.101)
09	Public Notice	By IRP within 3 days from the date of his appointment	By AA within 7 days of passing the order admitting the application
10	Time for submission of claims	Within 14 days from the date of commencement of CIRP; or  A Creditor who fails to submit claim with proof within 14 days, may submit his claim on or before the 90 <sup>th</sup> day of the Insolvency commencement date.	Within 21 days from the date of the issue of the Public Notice
11	Claims processing	Within 7 days from the last date of the receipt of the claims	Within 30 days from the date of Public Notice
12	Committee of Creditors	CoC shall be formed within 23 days from the Insolvency commencement date.	List of Creditors shall be prepared within 30 days from the date of Public notice.



Sl. No.	Broad head	CIRP of a Corporate Debtor (CD)	Insolvency Resolution of a Personal Guarantor to CD
13	Voting share	Voting share shall be determined on the basis of the financial debts owed by the financial creditors	Voting share of each creditor shall be in proportion to the debt owed to such creditors
14	Voting threshold for approval	By a vote of not less than 66% of voting shares of the financial creditors	By a vote of more than fifty percent of voting share of the creditors present who voted
15	Resolution Plan vs Repayment Plan	A plan proposed by the Resolution Applicant for insolvency resolution of the CD as a going concern which also includes restructuring of CD by way of merger, amalgamation and demerger	A plan prepared by the guarantor in consultation with RP for restructuring the debts or affairs of the creditors
16	Timelines for submission of Resolution Plan / Repayment Plan	Resolution plan to be submitted within 180 days + 90 days (subject to a maximum of 330 days) – RP shall endeavour to submit it 15 days prior to the last date.	Repayment plan to be submitted to AA on or before 120 days from the resolution process commencement date.
17	Information Memorandum (IM) vs Statement of Affairs (SOA)	IM is a memorandum prepared by the RP which will contain the relevant information required for formulating the Resolution Plan	SOA will be prepared by the RP which will contain the overall information about the guarantor
18	Role of RP	Role of the RP is to conduct the CIRP of CD as per the provisions of IBC, float Expression of interest, invite resolution plans, conduct CoC meetings, get resolution plans approved	Role of the RP is recommend the application for admission / rejection, negotiate a repayment plan or conduct creditors' meetings for approving repayment plan, conduct the Insolvency resolution process of PG as per the provisions of IBC.
19	Approval of Resolution Plan/ Repayment Plan	The Resolution Plan shall be approved by the CoC by a vote of not less than 66% of voting share of the financial creditors.	By majority of 3/4 <sup>th</sup> in value of the creditors present in person/proxy and voting on the resolution in a meeting of creditors
20	Discharge Order	No concept of Discharge Order. However, a corporate debtor is discharged from all its liabilities under a resolution plan as specified in the NCLT-approved resolution plan.	An order passed by the AA discharging the debtor in relation to the debts mentioned in the repayment plan upon completion of implementation of the repayment plan.

**For any clarifications, please contact at the following telephone numbers / email.**

28<sup>th</sup> December 2019

**Decisions by NCLT, NCLAT and Supreme Court on matters relating to  
Personal Guarantors to Corporate Debtors**

**Preamble:**

A contract of guarantee is 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 “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”. A guarantee may be either oral or written. (Sec.126 of the Indian Contract Act, 1872).

The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. (Sec.128). The creditor may go against either the principal debtor, or the surety, or both, in no particular sequence (Chockalinga Chettiar Vs. Dandayuthapani Chettiar – 1928).

In other words, the general principle of contract of guarantee is that the liability of the principal debtor and the surety is co-extensive and is joint and several (Bank of Bihar Vs. Damodar Prasad – 1969). The principle of co-extensive liability may be limited by the terms of the contract of guarantee.

**Some of the important case laws in relation to personal guarantors have been compiled and given below. It is also relevant to add here that the amendment to IBC with effect from 6<sup>th</sup> June 2018 and the decision of Supreme Court in the matter of SBI Vs. V. Ramakrishnan (Veesons) have set the tone on recovery proceedings against the personal guarantors to corporate debtors. Please read further:**

Sl.No.	Case Law Title / Event	Forum & Order Date	Brief contents
01	Sanjeev Shriya Vs. State Bank of India	Allahabad High Court 6 <sup>th</sup> Sept. 2017	If a corporate insolvency resolution process is going on against the corporate debtor, then the debt owed by the corporate debtor is not final till the resolution plan is approved and thus the liability of the surety would also be unclear. Until the debt of the corporate debtor is crystallised, the guarantor’s liability may not be triggered.
02	State Bank of India Vs. V. Ramakrishnan (Veesons)	NCLAT 28 <sup>th</sup> Feb. 2018	Sec.14 (Moratorium provisions) would bar proceedings or actions against sureties as they would affect the corporate insolvency resolution process.  Aggrieved by this decision, SBI goes to Supreme Court on appeal.

The Government mandated the Insolvency Law Committee to review various aspects of IBC after its implementation. This question of “moratorium to personal guarantors to corporate debtors” was considered at length by this Committee.

**In its Report dated 26<sup>th</sup> March 2018, the Committee noted the following:**

“... that the characteristic of contract of guarantee, i.e. having remedy against both the surety and the corporate debtor, without the obligation to exhaust the remedy against one of the parties before proceeding against the other, is of utmost importance for the creditor and is the hallmark of a guarantee contract and availability of such remedy is in most cases the basis on which the loan may have been extended.”

“5.11. Further, since many guarantees for loans of corporates are given by the promoters in the form of personal guarantees, if there is a stay on actions against their assets during corporate insolvency resolution process, such promoters (who are also corporate applicants) may file frivolous applications to merely take advantage of the stay and guard their assets. In the judgments analysed in this relation, many applications have been filed by the corporate applicant under Sec.10 of IBC and this may corroborate the above apprehension of abuse of the moratorium provision.”

**The Committee, therefore, decided:**

“to clear the confusion regarding treatment of assets of guarantors of the corporate debtor vis-à-vis the moratorium on the assets of the corporate debtor, it has been recommended to clarify by way of an explanation to Sec.14 that all assets of such guarantors to the corporate debtor shall be outside scope of moratorium imposed under the Code.”

**Amendment to IBC – Sec.14(3):**

Based on the above, Sec.14(3) of IBC dealing with moratorium provisions were amended to make it clear that they shall not apply to “a surety in a contract of guarantee to a corporate debtor”. This amendment came into effect from 6<sup>th</sup> June 2018.

As one may recollect, SBI's appeal against the order of NCLAT was lying before the Hon'ble Supreme Court in the matter of V. Ramakrishnan (personal guarantor to Vecons). Hon'ble Supreme Court passed its orders on 14<sup>th</sup> August 2018 on this matter, duly taking into account the amendment to Sec.14(3) of IBC ending the stalemate on this issue.

Sl.No.	Case Law Title	Forum & Order Date	Brief contents
03	State Bank of India Vs. V. Ramakrishnan (Vecons)	Hon'ble Supreme Court  14 <sup>th</sup> Aug. 2018	"In the vast majority of cases, personal guarantees are given by directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and co-extensive liability to pay off the entire outstanding debt, which is why Sec.14 is not applied to them. " (Para 23)

#### **Decision by NCLT Mumbai & NCLAT post Supreme Court decision in Aug. 2018:**

It would also be relevant to go through decision of NCLT-Mumbai Bench in the matter of Punjab National Bank Vs. Vindhya Vasini Industries Ltd. on 20<sup>th</sup> March 2018 which got overturned by NCLAT on 25<sup>th</sup> Sept. 2018. The reason stated by NCLAT, after the landmark Supreme Court judgment dt. 14<sup>th</sup> August 2018 in the matter of State Bank of India Vs. V. Ramakrishnan, was that there was no separate application under Sec.60(2) of IBC to pursue against the personal guarantors. In this context, it is noteworthy to state that the provisions relating to filing of an application for insolvency resolution of a personal guarantor having been notified by way of Rules and Regulations with effect from 1<sup>st</sup> Dec. 2019, the financial creditor can now proceed under Sec.95 of IBC (Form C). Following are the gist:

Sl.No.	Case Law Title	Forum & Order Date	Brief contents
04	Punjab National Bank Vs. Vindhya Vasini Industries Ltd.	NCLT Mumbai 20 <sup>th</sup> Mar.2018	As no resolution plan was received, the CoC decided to liquidate the company. Property belonging to personal guarantor was also mortgaged to the bank under the same loan agreement based on which the loan was sanctioned. The corporate debtor's debt was intricately linked with the property of the guarantor mortgaged. Therefore, the liquidator was authorised to take necessary steps to liquidate the asset of the guarantor as well. The assets of the guarantor can be subjected to liquidation by invoking the jurisdiction prescribed under Sec.60(2) of IBC.

Sl.No.	Case Law Title	Forum & Order Date	Brief contents
05	Ashutosh Singhania Vs. Liquidator, Vindhya Vasini Industries Ltd.	NCLAT 25 <sup>th</sup> Sep. 2018	Legal heir of the personal guarantor challenged the NCLT-Mumbai order dt. 20 <sup>th</sup> March 2018. After considering in detail the Supreme Court order dt. 14 <sup>th</sup> Aug. 2018 in the matter of State Bank of India Vs. V. Ramakrishnan, NCLAT held that “the order directing to include the property of the personal guarantor for liquidation is illegal, also observe that in the absence of separate application under Sec.60(2) of IBC, no action can be taken against the movable and immoveable assets of the personal guarantor. Impugned order to the extent above is set aside.”

#### Another decision by NCLT-Chennai Bench in Oct. 2018:

Another decision in this regard by NCLT-Chennai Bench deserves mentioning as this order too has come on 30<sup>th</sup> October 2018 much after the Supreme Court decision in SBI Vs. V. Ramakrishnan in the month of August 2018.

Sl.No.	Case Law Title	Forum & Order Date	Brief contents
06	State Bank of India Vs. Vijaraj Surana, Dinesh Chand Surana, Shantilal Surana  & L&T Infrastructure Finance Co. Ltd. Vs. Vijaraj Surana, Dinesh Chand Surana, Shantilal Surana ( MA in CP/646/IB/CB/2017)	NCLT Chennai 30 <sup>th</sup> Oct. 2018	<p>The personal guarantors stood guarantee to the loans availed by Surana Power Ltd. (corporate debtor) which was into CIRP. SBI filed separate company petitions under Sec.60(2) of IBC on the footing that creditors can initiate insolvency proceedings against the personal guarantors before the NCLT. L&amp;T Infra filed Miscellaneous applications in the CP filed against the corporate debtor under Sec.60(5) of IBC.</p> <p>The Bench noted that NCLT is bereft of jurisdiction. Because, Sec.60(4) states that the powers of DRT under Part III of IBC shall be vested with NCLT. Part III of IBC not yet being notified, NCLT cannot exercise such powers. NCLT will take the avatar (incarnation) as DRT by virtue of Sec.60(4) but to get that jurisdiction to NCLT, that avatar to DRT shall be in existence. Today DRT is in existence as before, but DRT in the avatar of Adjudicating Authority as defined in Sec.79(1) of Part III of the Code is not in existence.</p>

			<p>Jurisdiction conferred on NCLT under Sec.60(4) is not only derivative but also contingent upon the CIRP of corporate debtor being pending in the NCLT.</p> <p>The course open to the creditors would be to file application under Sec.95 of IBC but these provisions have not been notified.</p>
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Sl.No.	Case Law Title	Forum & Order Date	Brief contents
07	Lalit Mishra & Others Vs. Sharon Bio Medicine Ltd. & Others	NCLAT 19 <sup>th</sup> Dec.2018	<p>The appellants (promoters and personal guarantors) challenged the order of approval of resolution plan, inter alia, on the ground that the personal guarantors have been discriminated in the resolution plan.</p> <p>“As on approval of the resolution plan, the claim of the entire stakeholders stand cleared and the “personal guarantor” thereafter cannot claim that they have been discriminated.”</p> <p>“It was not the intention of the legislature to benefit the personal guarantors by excluding the legal remedies available in law by the creditors to recover legitimate dues by enforcing the personal guarantees which are independent contracts.”</p> <p>It is a settled position of law that the liabilities of guarantors are co-extensive with the borrower. This Appellate Tribunal held that the resolution under the IBC is not a recovery suit. The object of IBC is, inter alia, maximisation of the value of the assets of the corporate debtor, then to balance all the creditors and make availability of credit and for promotion of entrepreneurship of the corporate debtor.....”</p> <p>“The IBC seeks to protect creditors of the corporate debtor by preventing promoters from rewarding themselves at the expense of creditors and undermining the insolvency processes”.</p>



### **Right of subrogation no longer available to the personal guarantors:**

As per Sec.140 of Indian Contract Act, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor. Applying this principle, the personal guarantors argued in various matters that they get the subrogation right once they pay the defaulted dues of the corporate debtor. On the approval of a resolution plan, it is open to say that the personal guarantee will not result into any liability towards the corporate debtor or the resolution applicant. But the creditors have the right to go against the personal guarantors for the unsettled amount due from the corporate debtor. Further, by virtue of the fact that IBC proceedings are not recovery proceedings, the guarantors do not get any subrogation right to proceed against the corporate debtor or the resolution applicant.

### **Conclusion:**

The amendment to Sec.14 of IBC in June 2018 made it very clear that the moratorium provisions shall not be applicable to a surety in a contract of guarantee to a corporate debtor. The subsequent decision of Supreme Court in August 2018 in the matter of SBI Vs. V. Ramakrishnan also made it clear that there is no bar on proceedings against the personal guarantors to corporate debtors which were under going corporate insolvency resolution process. However, the procedural aspects came in the way as to whether an application should be filed under Sec. 60(2) or 60 (5) or Sec.95 of IBC.

Now, with the Rules relating to personal guarantors to corporate debtors having been notified by the Central Government with effect from 1<sup>st</sup> Dec. 2019 and the related IBBI Regulations have also been notified to take effect from the same day, decks are cleared for the creditors to launch proceedings under IBC against the personal guarantors.

In such a situation, the application under Sec.95 has to be filed with the jurisdictional NCLT. With the Central Government notifying the provisions of Part III in so far as they relate to the personal guarantors to corporate debtors, the powers vested with DRT in respect of such personal guarantors shall be exercised by the NCLT.

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**For any clarifications, please contact at the following telephone numbers / email.**

		
2 <sup>nd</sup> Floor, Evalappan Mansion, No.188/87, Habibullah Road, T. Nagar, Chennai - 600 017	+ 91 44 2814 1603 + 91 44 2814 1604	createandgrowresearch@gmail.com www.createandgrowresearch.org CIN: U73200TN2019NPL132843



## **FREQUENTLY ASKED QUESTIONS**

### **FAQ's on Insolvency Resolution Process for Personal Guarantors (PG) to the Corporate Debtor (CD)**

1. Who will be benefitted by the new provisions of Insolvency Resolution Process against Personal Guarantors to Corporate Debtors? (PG to CD)

**Answer: The secured creditors to corporate debtor.**

2. The Corporate Debtor (Borrower), for whom Personal Guarantee was given by the Personal Guarantor, is not undergoing CIRP or liquidation proceedings in National Company Law Tribunal (NCLT). Where the Application should be filed by the Creditor?

**Answer: The application should be filed in the Debt Recovery Tribunal (DRT) having territorial jurisdiction over the place where the personal guarantor actually and voluntarily resides or carries on business or personally works for gain.**

3. The Corporate Debtor (Borrower) for whom Personal Guarantee was given by the Personal Guarantor, is currently undergoing CIRP or liquidation proceedings in National Company Law Tribunal (NCLT). Where the Application should be filed by the Creditor?

**Answer: The application should be filed in the NCLT where the corporate insolvency resolution process or liquidation proceeding against the Corporate Debtor is pending. Wherever the application for CIRP or liquidation before NCLT is pending admission, in such cases, the application against personal guarantor to such CD should be filed before the respective DRT.**

4. Can these provisions be used in a case where the creditor intends to go against a PG where the corporate debtor has already reached a settlement? If so, what is the time limit? Where such an application should be filed?

**Answer: In the event of a settlement reached between the applicant creditor and the corporate debtor as per Sec.12A of IBC, then, the adjudicating authority (NCLT) has to pass an order relieving the corporate debtor from the rigors of IBC. In such an event, as there is no pending proceeding- be it CIRP or liquidation – in respect of the corporate debtor, the application against the personal guarantor should be filed before the jurisdictional DRT. Limitation Act will apply with reference to the personal guarantee.**

5. What are the advantages for me as a financial creditor (Bank / FI) if I go for action under these provisions of IBC instead of taking recourse under SARFAESI Act?

**Answer:** Whether the creditor has got specific assets of the personal guarantor mortgaged with him, going under SARFAESI Act is like a “surgical strike”. In cases where the creditor does not have the assets of the personal guarantor mortgaged or charged, it would be advisable to proceed against them under IBC. In this process, all the assets and all the liabilities of the PG will be brought into the process for a “repayment plan”.

6. Should the application be filed against every PG to CD separately or collectively? Can an application be filed selectively?

**Answer:** An application can be filed by a creditor against any PG separately or against all the PGs collectively. A creditor can also be selective in pursuing against a particular personal guarantor.

7. Is there a limitation period for PG within which the matter should be taken up?

**Answer:** The provisions of Limitation Act will be applicable.

8. Can a creditor proceed against a personal guarantee signed by a Power of Attorney holder on behalf of the guarantor to the corporate debtor.

**Answer:** Yes, he can. The principal is liable for all actions of the agent performed under the duly constituted power of attorney.

9. A PG has withdrawn his guarantee by means of a letter to CD but not to the bank. Can the creditor proceed against the PG under these provisions?

**Answer:** Yes, he can. Unless the guarantor is duly relieved by the creditor, the guarantor's liability continues under the guarantee agreement.

10. What happens if the PG to CD dies before the application under the newly notified provisions is filed before NCLT / DRT?

**Answer:** The provisions of the guarantee agreement shall decide this issue. However, in general, the estate of the deceased shall be liable under the guarantee agreement.

11. A Personal Guarantor has filed an application in DRT under the newly notified IBC provisions. An application filed in NCLT by a lender against the CD is still in process and it has not yet been admitted. Will the process in respect of the PG's application in DRT be continued?

**Answer: Yes. However, as soon as the CD comes into CIRP, the proceedings before DRT in respect of the personal guarantor shall have to be transferred to the NCLT. However, the process for such transfer and who needs to initiate are not clear as of now.**

12. Can a secured financial creditor proceed under SARFAESI when an application by a creditor against the PG has been admitted by NCLT/ DRT?

**Answer: No. The interim moratorium shall be applicable once an application is filed by a creditor with the NCLT / DRT.**

13. The Resolution Plan for the Borrower (Corporate Debtor) has been approved and as per the plan Financial Creditors are being paid in full i.e., 100 % of their Claim amount calculated till the CIRP Commencement date. Can any of these Financial Creditors whose claims are being paid in full initiate Insolvency Process against the PG for any other dues of the CD?

**Answer: Yes, the creditors have the right to proceed against the personal guarantors to the corporate debtor so long as the resolution plan does not specifically curtail the rights of the creditors against the personal guarantors. Contract of guarantee being an independent agreement and if the creditors do not voluntarily give up their rights arising out of such an agreement, the creditors do have the option to proceed against the personal guarantors to the corporate debtor for the balance unpaid amount covered under the guarantee.**

14. Where an application filed by a Banker (Financial Creditor) under section 7 has been admitted and CIRP has commenced for the Corporate Debtor (Borrower), can an Application under Section 95 to initiate proceedings against the Personal Guarantor be filed simultaneously?

**Answer: Yes. There is no bar on such an application being filed.**

15. Pursuant to the approval of Resolution Plan, the security of the Personal Guarantor held by the financial creditor has been released at the instance of the resolution applicant. Can the financial creditor still proceed against the Personal Guarantor in respect of the Personal Guarantee given by him?

**Answer:** The terms of the contract of guarantee have to be seen because the security held has been released. If the personal guarantee agreement speaks of liability towards the outstanding loan and not capping to the value of the security, yes, the creditors can proceed as per the guarantee terms.

16. How will the cost incurred during the Insolvency Process be treated/ accounted?

**Answer:** The “resolution process costs” include the fees payable to the Resolution Professional (RP), expenses incurred by the RP for the resolution process, amount and cost of interim finance raised for the purpose of resolution process, etc. The “repayment plan” shall provide the source of funds that will be used to pay the resolution process costs and that such payment shall be made in priority over any creditor. Logically, such costs should be expenses in the hands of the personal guarantor.

17. Who can initiate Insolvency Resolution Process against the Personal Guarantors to the Corporate Debtor and when?

**Answer:** Any creditor (operational or financial) or the guarantor himself can initiate insolvency resolution process against the personal guarantor on a default in payment of the debt. The threshold amount of debt is Rs.1,000/= but the Central Government can notify this amount upto Rs.1,00,000/=. In the case of an application by a creditor, there has to be a demand notice issued to the personal guarantor for payment of the debt and failure of the guarantor to pay the debt within 14 days of the demand notice.

18. Whether all creditors are entitled in the Insolvency Resolution Process for decision making?

**Answer:** Yes. There is no differentiation of financial or operational creditor in the meetings of the creditors. An associate of the guarantor cannot be entitled to vote in a meeting of the creditors. A secured creditor shall forfeit his right to enforce the security interest during the insolvency resolution period. If he is not forfeiting his right, then, the secured creditor can exercise his voting right only to the extent of unsecured part of the debt.

19. Will there be in any situation in which creditor(s) may be required to forego their enforcement of security for the successful implementation of Settlement Plan proposed by the Personal Guarantor?

**Answer: Yes. There could be such a situation.**

20. Whether secured creditors are superior than unsecured creditors in the Insolvency Resolution Process of a personal guarantor to corporate debtor?

**Answer: No. In fact, a secured creditor has to forfeit his right to enforce the security interest during the insolvency resolution process if his voting share has to be for the entire debt. Otherwise, his voting share will be computed only in respect of unsecured part of the debt.**

21. Whether meeting of creditors is mandatory for approval of the “repayment plan”? At whose discretion a meeting of creditors will be called?

**Answer: No, meeting of creditors is not mandatory. If the Resolution Professional is of the view that there is no need for a meeting of the creditors, he shall record the reasons for such decision. The RP can call a meeting of the creditors. The RP shall convene a meeting of the creditors on the request of creditors representing 33% of the voting share.**

22. In case RP submits to the adjudicating authority that the application filed by the Personal Guarantor is not proper as per law, whether the creditors are provided with any recourse?

**Answer: In such an event, the adjudicating authority may reject the application and the order shall record that the creditor is entitled to file for a bankruptcy order in respect of the personal guarantor.**

23. Is it mandatory for the creditor or the guarantor to file their application before adjudicating authority through a Resolution Professional?

**Answer: An application can be made by the creditor or guarantor by themselves or through a Resolution Professional. If it is done by the creditor or guarantor himself, the adjudicating authority shall direct the Insolvency and Bankruptcy Board of India to nominate a resolution professional who shall be appointed by the adjudicating authority.**

24. What is excluded debt? What kind of treatment is given to the excluded debt?

**Answer:** Excluded debts are those debts which have the character of a statutory liability – say a fine imposed by a court or tribunal, liability to pay damages for negligence, nuisance or breach of a statutory, contractual or legal obligation; liability to pay maintenance to any person under any law for the time being in force; liability in relation to a student loan, etc. Though there is no specific provision in the Rules or Regulations on the treatment of such excluded debts, the “repayment plan” has to provide for the details of the excluded debts of the guarantor.

25. What is an excluded asset?

**Answer:** Excluded asset predominantly includes unencumbered tools, books, vehicles, etc. as are necessary for the debtor for the purpose of his employment, business or vocation and also includes unencumbered furniture, household items, personal ornaments which cannot be parted with in accordance with religious usage (not exceeding Rs.1 lakh value). Also, unencumbered single dwelling unit owned by the debtor (if it is in rural area – not more than Rs.10 lakhs and in urban area, not more than of Rs.20 lakhs value).

26. Who makes a public announcement after the admission of the application by the adjudicating authority?

**Answer:** The adjudicating authority (NCLT / DRT) shall issue a public notice within 7 days of passing the order admitting the application, inviting claims from all creditors within 21 days of such issue.

27. Can the RP of the CD be the RP of the personal guarantor as well?

**Answer:** No. A person shall not be eligible to be the RP for the insolvency resolution process of the personal guarantor if he is an associate of the personal guarantor, if he is related party of the corporate debtor or he has acted or is acting as IRP or RP or Liquidator of the corporate debtor.

28. Is it mandatory that the RP in the Insolvency Resolution Process should only be the Bankruptcy Trustee in the Bankruptcy Process of the personal guarantor to the corporate debtor?

**Answer: No. There is no such provision. The creditor or the guarantor may propose an insolvency professional as bankruptcy trustee while making an application for bankruptcy process. If no such proposal is made, the adjudicating authority may appoint an insolvency professional nominated by IBBI as the bankruptcy trustee.**

29. What is the voting share required for the creditors to approve a repayment plan?

**Answer: The repayment plan or any modification thereof shall be approved by a majority of more than three-fourth (>75%) in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors.**

30. Which type of personal guarantors are eligible to initiate Insolvency Resolution Process voluntarily? Is there any disqualification?

**Answer: A personal guarantor who is an undischarged bankrupt or who is undergoing an insolvency resolution or bankruptcy process shall not be entitled to make an application under Sec.94 for an insolvency resolution process.**

31. What is Interim moratorium? Is it different from a regular moratorium? Whose interests will the moratorium safeguard - Personal guarantors or the creditors?

**Answer: Upon an application being filed with the adjudicating authority by a creditor or the guarantor, an interim moratorium starts which shall cease to have effect on the date of admission of the application. During the interim moratorium period, the creditors of the guarantor shall not take any legal action or proceedings in respect of any debts and any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed. Interestingly, the provisions of interim moratorium do not say anything about the guarantor alienating, transferring, encumbering or disposing of any of his assets or his legal rights or beneficial interest therein which form part of the regular moratorium.**

32. How many days moratorium will be provided to the Personal Guarantors to propose a settlement plan to the Adjudicating Authority?



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**Answer: Moratorium is provided for a period of 180 days from the date of admission of the application or until the date on which the adjudicating authority passes an order under Sec.114 either approving or rejecting the repayment plan.**

**For any clarifications, please contact at the following telephone numbers / email.**



2<sup>nd</sup> Floor, Evalappan Mansion,  
No.188/87, Habibullah Road,  
T. Nagar, Chennai - 600 017



+ 91 44 2814 1603  
+ 91 44 2814 1604



createandgrowresearch@gmail.com  
www.createandgrowresearch.org  
CIN: U73200TN2019NPL132843





## Market round-up

### IBC Cases Sep'2019

### Snap-shot \*

Status as on 30 <sup>th</sup> September 2019	No. of CIRP's
Admitted	2,542
Closed on Appeal Review / Settled	186
Closed by withdrawal under Sec.12A	116
Closed by Resolution	156
Closed by Liquidation	587
<b>Ongoing CIRP</b>	<b>1,497</b>
> 270 days	535
>180 days ≤ 270 days	324
> 90 days ≤ 180 days	276
≤ 90 days	362

Note: (1) The number of days is from the date of admission  
(2) The number of days includes time, if any, excluded by the Tribunal

\* Source: *Insolvency and Bankruptcy News (Jul-Sep 2019/ Vol.12)*

## IBC - SO FAR

(Posted on 15<sup>th</sup> Dec 2019 by PIB Delhi)

Status of CIRP	No. of CIRP's	Amount involved (Rs. in crores)
No. of Applications filed	21,136	
Disposed off at pre-admission stage	9,653	3,74,931
Admitted into CIRP	2,838	
Closed on Appeal/Review/Withdrawn	306	
Resolved cases	161	1,56,814

Source: IBBI website: Press Release: Year End Review-2019 of MCA (dt.17<sup>th</sup> Dec 2019)

A few more newspaper clippings on NPA in banking sector are given below:

## Bad loans of banks may go up again in next 9 months: RBI

TIMES NEWS NETWORK

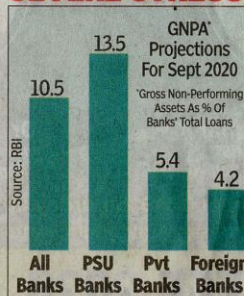
**Mumbai:** The Reserve Bank of India (RBI) warned on Friday that bad debts in the economy may rise again in the next nine months, mainly due to a weak macro situation, higher slippages and low credit growth.

RBI's financial stability report (FSR), published bi-annually in June and December, also pointed out that there were suspected cases of ratings shopping by mid-rated entities. It added that large corporates which are flush with cash and don't need loans now are one of the reasons for the current muted rate of growth of credit offtake in the banking system.

The report also pointed out that banks' credit growth remained subdued at 8.7% during the year ended September 2019, although the corresponding number for the private sector banks was 16.5%.

RBI also said Indian banks' capital adequacy ratio improved significantly to 15.1% in September 2019 after recapitalisation of public sector banks (PSBs) by the government.

### SEVERE STRESS



The provision coverage ratio (PCR) also rose to 61.5% from 60.5% a year earlier, implying increased resilience of the banking sector.

"Macro-stress tests for credit risk show that under the baseline scenario, SCBs' gross non-performing asset (GNPA) ratio may increase from 9.3% in September 2019 to 9.9% by September 2020, primarily due to change in macroeconomic scenario, marginal increase in slippages and the denominator effect of declining credit growth, RBI's FSR noted.

24 banks, P 22

TDI 28.12.19

## 24 banks have GNPA ratios under 5%: Report

From P 1

It pointed out that state-run banks' GNPA ratio may increase to 13.2% by September 2020 from 12.7% in September 2019, whereas for private banks it may climb to 4.2% from 3.9%, under the stress scenario. On the other hand, foreign banks' GNPA ratio may increase to 3.1% from 2.9%. The central bank said that Indian banks' net non-performing assets (NNPA) ratio declined in September 2019 to 3.7% due to increased provisioning.

The report also pointed out that bank-wise distribution of asset quality showed that while 24 banks had GNPA

ratios of under 5%, four banks had GNPA ratios higher than 20% in September 2019. The asset quality of agriculture and services sectors, as measured by their GNPA ratios, deteriorated to 10.1% from around 8% a year earlier. However, for the industry sector, slippages fell sharply to 3.8% from around 5%. The report also showed that the share of large borrowers (between ₹100 crore and ₹5,000 crore) in banks' total loan portfolios fell to 51.8% from 53% while their share in GNPA improved to 79.3% from 82.2% earlier. It noted that the top 100 large borrowers accounted for 16.4% of banks' gross advances and 16.3% of GNPA.

TDI - 28.12.19

## Improve corporate governance: Das

**Mumbai:** Amid rising macro-economic worries best reflected in the falling growth numbers across the spectrum, RBI governor **Shaktikanta Das** has flagged corporate governance concerns across India Inc, including banks, to lift the efficiency of the economy to its full potential. He also said reviving consumption and investment remains the key challenges. The comments come at a time when many promoters of companies are under regulatory scanner. "All the regulators under the aegis of the Financial Stability and Development Council are striving to buttress the



trust in the financial system. Having said that let me re-emphasise the importance of good corporate governance across the board, which to my mind is the most significant factor that can lift the efficiency of our economy to its full potential," Das said in his foreword to Financial Stability Report released Friday.

Having cut the interest ahead of the curve by a hefty 135 bps to a nine-year low of 5.15% to prop the sagging economy but without much success, the governor also warned of being mindful of the 'cobra effect' — which happens when an attempted solution makes the problem worse.

SE. AGENCIES

TDI - 28.12.19



# RBI sounds the alarm over 'rating shopping'

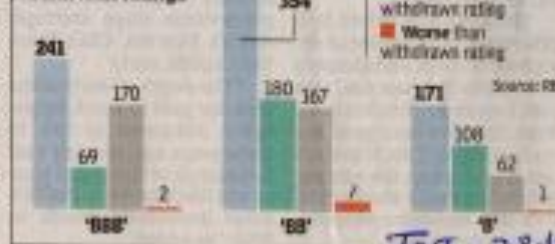
Says After Losing A Grade, Cos Manage To Get Same Or Better Rating In 3 Months

Times News Network

Mumbai: The RBI's financial stability report on Friday warned of 'rating shopping' by corporates for long-term bank loans. This refers to how, when one rating agency withdraws a rating on a company or a paper, within three months another agency gives the same company or paper a higher or at least the same rating. The report said in a sample examined by it, most rating shopping happened around 'BBB' or lower rated instruments. It called for a closer scrutiny of instances of rating shopping.

## A FISHY TREND

Movement in 'withdrawn' long-term bank loan ratings



## Cash-rich large cos don't need loans

Mumbai: The RBI report pointed out that large corporates (with

# Loan frauds jump to 90% from 55% Spike Comes After New NPA Reporting Rules, PSBs Worst Hit

Rachel Chitra@timesgroup.com

Bengaluru: Loan frauds as a percentage of total banking frauds jumped to 90% in fiscal 2019 from 55% in fiscal 2018 after regulatory standards were changed for banks reporting non-performing assets (NPAs).

Loan frauds increased year-over-year to ₹64,548 crore in 2019 from ₹22,558 crore, even as frauds in other segments — such as debit & credit cards, online banking and forex — declined.

Interestingly the share in these frauds of public sector banks (PSBs) is as high as 50% in terms of the amount lost. And for high-value frauds — that is, ₹50 crore or above — the share of PSBs rose higher to 91.6%. "This mainly reflects the lack of adequate internal processes, people and systems to tackle operational risks," the RBI said in a recent report.

It also said that the "spike

## PVT BANKS ACCOUNT FOR 90% FRAUD

Category	2018	2019
Loans	22,558	64,548
Card / internet	119	71
Deposits	457	148
Cheque/DOs	34	34
Forex	1,426	685
<b>Total (in ₹ cr)</b>	<b>46,167</b>	<b>71,451</b>



in the number of cases was because of the time period when banks chose to report the fraud, whereas the graph would be trending lower if analysed on the basis of the date of occurrence of the fraud. This could indicate a lag in reporting on the part of the bank or a delay in detecting the fraud.

The report also pointed out that the sharp spike in loan frauds this year was because of a change in regulations that called for tighter scrutiny of NPAs to ensure early detection of fraudulent

loan accounts. "In February 2019, the government issued a framework for timely detection, reporting and investigation relating to frauds in PSBs, which required them to evaluate NPA accounts exceeding ₹50 crore from the angle of possible frauds, to supplement the earlier efforts to unearth fraudulent transactions. This appears to have caused the sharp jump in reported frauds," the report noted.

Another concern is the rise in the frauds in the retail loan segment, traditionally

considered a low-risk segment. Bankers said the trend of instant five-minute online loans, same-day loans, etc., are the reasons for lower due diligence, resulting in higher frauds. On the positive side, cases of people losing money due to skimming of debit cards at ATMs or PoS machines, online banking frauds and others trended lower. Internet/card fraud declined 35% to ₹71 crore, indicating that the RBI's push for banks to move from magnetic stripe to EMV chip-based cards, that are more secure, has worked in preventing frauds.

The report further showed that deposit frauds also tended lower to ₹147 crore from ₹457 crore a year earlier, indicating that banks are enforcing tougher know-your-customer (KYC) norms to prevent money laundering, round-tripping and other frauds. Forex frauds also saw a decline to ₹685 crore from ₹1,426 crore a year earlier.

3<sup>rd</sup> Jan. 2020

**Note on the**

## **Insolvency & Bankruptcy Code (Amendment) Ordinance, 2019 wef 28<sup>th</sup> Dec.2019**

### **Preamble:**

In spite of the focussed push given by the Government for faster insolvency resolution, the largest of the cases, “Essar Steel India Limited” was going through different hurdles. Mired in numerous litigation proceedings, the Arcelor Mittal’s resolution plan was finally cleared by the Supreme Court which upheld the supremacy of the decision taken by the creditors in control of the Corporate Debtor over riding the decisions taken by lower courts, while deciding on the Resolution plan.

Of course though the highest court in India was concerned about the time taken in resolving the case, which had crossed all the time limits set, it also emphatically put down the amendment to the Code by the Government limiting the maximum time to 330 days including the time taken in resolving legal disputes that arose in the process of handling such cases into the extended time frame.

The preamble to the Ordinance, notified on 28<sup>th</sup> December 2019, highlights the following measures to address the concerns faced during insolvency resolution process:

- a. To give the highest priority in repayment to last mile funding to the company which is undergoing insolvency process or liquidation;
- b. To provide immunity against prosecution of the corporate debtor;
- c. To prevent action against the property of such corporate debtor;
- d. To prevent action against the successful resolution applicant who has taken over the corporate debtor on certain conditions and
- e. To fill some critical gaps that arose in the framework of resolution of corporate insolvency by amending certain provisions.

**a. Matters related to last mile funding:( amendment to Section 14)**

- After commencement of the insolvency resolution process, the first and foremost job of the interim resolution professional or the resolution professional as the case may be, is to explore the possibility of keeping the corporate debtor as a going concern so that the value maximisation of the assets of the company is ensured. Where it cannot be kept as a going concern, then also necessary steps critical to protect and preserve the value of the corporate debtor need to be in place.
- The existing provisions of Moratorium under Sec 14 of the Code ensures the continuity of supply of essential goods and services to the corporate debtor are not terminated or suspended or interrupted during moratorium period. It is further amended now with an explanation provided which says that *“notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”*.
- The present amendment also provides where the IRP or RP considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- In the amendment to the definition of “interim finance”, the term has been expanded to cover ***“such other debt as may be notified”*** which will help the IRP or RP to source finance to keep the corporate debtor as a going concern.(Section 5 clause 15).
- By amending Sec 29A to include words “ or completion of such transactions as may be prescribed” after ***“convertible into equity shares”*** the Code will provide room for more resolution applicants from the financial creditors to submit resolution plan for the corporate debtor

**b.To provide immunity against prosecution of the corporate debtor (insertion of new Sec.32A)**

**c. To prevent action against the property of such corporate debtor**

**d.To prevent action against the successful resolution applicant who has taken over the corporate debtor on certain conditions**

**From the date the resolution plan has been approved by the AA under section 31,**

- The liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease and the corporate debtor shall not be prosecuted for such an offence; and
- No action shall be taken against the property of the corporate debtor in relation to the offence committed prior to the commencement of the corporate debtor where such property is covered under the approved resolution plan mentioned above.

**However, notwithstanding the above, the following persons shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor :**

- every person who was a “**designated partner**” as defined in clause (j) of Section 2 of the Limited Liability Partnership Act 2008 or
  - an “**officer who is in default**” as defined in clause (60) of Section 2 of the Companies Act,2013 or
  - an officer in charge of, or responsible to the corporate debtor in any manner and who directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority.
- **The corporate debtor under the management of the resolution applicant will provide assistance required for completing the investigation by the investigating authority investigating an offence committed prior to the commencement of the CIRP.**

**e. To fill some critical gaps that arose in the framework of resolution of corporate insolvency by amending certain provisions.**

**Appointment of IRP to be made when the order admitting the application is issued:**

In the definition for “insolvency commencement date” as per Sec.5(12), the proviso inserted on 6<sup>th</sup> June 2018 read that *“where the interim resolution professional is not appointed in the order admitting application under section 7,9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority”*. This proviso has been omitted now.

Consequently, Sec.16 (1) has also been amended now to say that ***“The Adjudicating Authority shall appoint an interim resolution professional on the insolvency commencement date.”***

Apparently the intention appears to be to avoid the situation where the insolvency resolution process has commenced due to admission of the application but there is no IRP in place; it may be recollected the Code provided for a period of 14 days to the AA to appoint an IRP from the insolvency commencement date. There wouldn't be any ambiguity henceforth in the date of commencement of CIRP.

**General - Sec.11 – Persons not entitled to make application – Explanation provided now**

There was a confusion whether a corporate debtor undergoing insolvency resolution process can trigger insolvency resolution process of another corporate person by way of filing an application under Sec.7 or 9 of IBC for the debt due from such other corporate persons. The provisions of Sec.11 were not clear on this aspect. The opening sentence of Sec.11 reads as under: “The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely: - (a) a corporate debtor undergoing a corporate insolvency resolution process....

The Explanation-II now added through this Ordinance makes it clear that ***“For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.”***

**For any clarifications, please contact at the following telephone numbers / email.**

  
2<sup>nd</sup> Floor, Evalappan Mansion,  
No.188/87, Habibullah Road,  
T. Nagar, Chennai - 600 017  
+ 91 44 2814 1603  
+ 91 44 2814 1604  
createandgrowresearch@gmail.com  
www.createandgrowresearch.org  
CIN: U73200TN2019NPL132843