

**Insolvency Professionals to act as Interim Resolution Professionals
(Recommendation) Guidelines, 2017**

25th May, 2017

Provisions of the Insolvency and Bankruptcy Code, 2016

1. Section 16 (3)(a) of the Insolvency and Bankruptcy Code, 2016 (Code) requires the Adjudicating Authority (AA) to make a reference to the Insolvency and Bankruptcy Board of India (Board) for recommendation of an insolvency professional (IP) who may act as an interim resolution professional (IRP) in case an operational creditor has made an application for corporate insolvency resolution process (CIRP) and has not proposed an IRP. The Board, within ten days of the receipt of the reference from the AA, is required under section 16(4) of the Code to recommend the name of an IP to AA against whom no disciplinary proceedings are pending.

Recommendations of the Joint Parliamentary Committee

2. The bill titled “The Insolvency and Bankruptcy Code, 2015”, as introduced in Lok Sabha, provided that the Board shall recommend the name of an IP who has the relevant expertise for a transaction under the Code. These provisions were dropped based on the recommendations of the Joint Parliamentary Committee, which observed as under while examining these provisions:

“19. Appointment of insolvency/resolution professional-recommendation/confirmation by the Board – Clause 16(4), 82(1)(b), 97(1)(b) and 98(5)(b) Clauses 16(4), 82(1)(b), 97(1)(b) and 98(5)(b) provide that the Board shall recommend/confirm the name/about the insolvency/resolution professional to the Adjudicating Authority- that such professional has relevant expertise or is suitable to act as a resolution professional. The Committee find that as per provisions made under Clause 199, no person shall carry on its business as insolvency professional agencies under this Code and enroll insolvency professionals as its members except under and in accordance with a certificate of registration issued in this behalf by the Board. Besides Clause 207 provides that no person shall render his services as insolvency professional under this Code without being enrolled as a member of an insolvency professional agency. Every insolvency professional shall, after obtaining the membership of any insolvency professional agency, register themselves with the Board within such time, in such manner and on payment of such fee, as may be specified by regulations. Moreover, Clause 205 provides that the insolvency professional agency shall make bye-laws to the minimum standards of professional competence for its members, the standards for professional and ethical conduct of its members and requirements for enrolment of persons as its members.

From the aforesaid provisions, the Committee find that there are sufficient safeguards to ensure that the competent persons are enrolled as insolvency professionals. In view of this, the Committee feel that provisions made under Clause 16(4)(a), 82(1)(b), 97(1)(b) and 98(5)(b) are redundant and may be omitted. Besides for the purpose of uniformity words “if no disciplinary proceedings are pending against him” may be added after words interim resolution professional” under clause 16(2).”

Guidelines

3. When a reference is received from AA for recommending the name of an IP, the Board has no information about the volume, nature and complexity of the CIRP or the resources available at the disposal of an IP. Keeping in view the observations of the Joint Parliamentary Committee and this fact, the Board believes that every IP is equally suitable to act as IRP of any CIRP, if otherwise not disqualified. Therefore, it is necessary to have guidelines to recommend one IP out of all registered IPs for any CIRP.

Identification of IP

4. An IP may be recommended to act as an IRP if -

- (a) there is no disciplinary proceeding pending against him;
- (b) he has not been convicted at any time in the last three years by a court of competent jurisdiction;
- (c) he is eligible to act as IRP of the CIRP under regulation 3 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or applicable regulations;
- (d) he is located in the vicinity of registered office of the corporate debtor; and
- (e) he expresses his interest to act as IRP of the CIRP in response to invitation of interest by the Board.

Determination of Vicinity

5. For the purpose of 4(d) above, an IP is located, as per his address registered with the Board, in one of the vicinities under column 2 of the following table:

| Region | Vicinity* |
|-----------------|---|
| 1 | 2 |
| Metro Region | Chennai |
| | Delhi |
| | Kolkata |
| | Mumbai |
| Northern Region | Punjab, Himachal Pradesh, Haryana, Chandigarh and Jammu & Kashmir |
| | Rajasthan |
| | Uttar Pradesh and Uttarakhand |
| Western Region | Gujarat, Daman & Diu and Dadar & Nagar Haweli |
| | Madhya Pradesh and Chhattisgarh |
| | Maharashtra (Excluding Mumbai) and Goa |
| Eastern Region | Andaman & Nicobar, Bihar, Jharkhand, Odisha and West Bengal (excluding Kolkata) |
| | Arunachal Pradesh, Assam, Manipur, Meghalaya, Nagaland, Tripura and Sikkim |
| Southern Region | Andhra Pradesh and Telangana |
| | Karnataka |
| | Kerala and Lakshadweep |
| | Tamil Nadu (excluding Chennai) and Puducherry |

* The vicinities will be re-grouped as the number of registered IPs increases.

Expression of Interest

6. As soon as a reference is received by the Board from an AA, the Board shall invite expression of interest by sending an e-mail to IPs, who are located in the

vicinity of registered office of the corporate debtor, at their email address registered with the Board. The expression of interest must be received by the Board in Form A within 24 hours of invitation of expression of interest. Such invitation as well as submission of expression of interest may be made online in course of time.

Illustration

Registered office of the corporate debtor is situated in Odisha. The IPs located in the vicinity covering Andaman & Nicobar, Bihar, Jharkhand, Odisha and West Bengal (excluding Kolkata) may express interest to act as IRP of the CIRP.

If expression of interest, complete in all respects in Form A, is not received from at least two eligible IPs from the vicinity of the corporate debtor, expression of interest will be invited from IPs located in the entire region. In this case, eastern region.

List of Eligible IPs

7. The Board shall prepare a list of eligible IPs for a CIRP. The name of an IP will be included in the list only if he -

- (a) has expressed interest;
- (b) is located in the vicinity of the corporate debtor, as per his address registered with the Board;
- (c) has not been convicted at any time during the last three years;
- (d) does not have any disciplinary proceeding pending against him; and
- (e) is eligible under regulation 3 the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or applicable regulations, as per his declaration. If his declaration turns out to be incorrect at any time, he shall attract disciplinary proceeding under the Code.

Selection of IP

8. The Board shall recommend the name of an IP from the list prepared under Para 7 above on the basis of following two criteria:

- a. He does not have too many ongoing assignments under the Code; and
- b. He has quoted a lower fee (this fee is all inclusive fee, but does not include out-of-pocket expenses). The Board shall keep the fee quoted by an IP confidential.

9. The IP who gets the highest score (X) will be recommended by the Board. If two IPs get the same score of X, the name of the IP will be decided by draw of lottery. X will be arrived at as under:

$$X = W1 V + W2 F, \text{ Where}$$

W1 = 0.5, weight for volume of ongoing assignments the IP has under the Code;

V = relative volume of ongoing assignments the IP has under the Code;

W2 = 0.5, weight for fee quoted by the IP; and

F = relative amount of fee quoted by the IP.

Ongoing Assignments

10. 'V' in Para 9 will be derived for an IP based on the volume of ongoing assignments. The IP who has the lowest volume of ongoing assignments will get a

score of 100. The IP who has the highest volume of ongoing assignments will get a score of 0. The difference between the highest volume and the lowest volume will be equated to 100 and other IPs will get scores between 0 and 100 depending on volume of their ongoing assignments. Take an example:

| IP | Volume of ongoing assignments | Difference between the highest volume and the volume of ongoing assignments of the IP | Formula | Score (V) |
|----|-------------------------------|---|-------------------|-----------|
| 1 | 20 | 100 | $100 / 100 * 100$ | 100 |
| 2 | 40 | 80 | $80 / 100 * 100$ | 80 |
| 3 | 60 | 60 | $60 / 100 * 100$ | 60 |
| 4 | 80 | 40 | $40 / 100 * 100$ | 40 |
| 5 | 100 | 20 | $20 / 100 * 100$ | 20 |
| 6 | 120 | 00 | $00 / 100 * 100$ | 00 |

11. The sum of the values of each ongoing assignment is the volume for an IP. An ongoing assignment shall be valued as under:

| Ongoing assignments | Volume |
|--|--------|
| IRP of a Corporate Insolvency Resolution Process | 5 |
| RP of a Corporate Insolvency Resolution Process | 10 |
| IRP of a Fast Track Process | 3 |
| RP of a Fast Track Process | 6 |
| Liquidation / Voluntary Liquidation | 5 |
| Individual Insolvency | 1 |
| Bankruptcy Trustee | 1 |

Fee quoted

12. 'F' in Para 9 will be derived for an IP based on the fee it has quoted. The IP who quotes the highest fee will get a score of 0. The IP who quotes the lowest fee will get a score of 100. The difference between the lowest fee and the highest fee will be normalised to 100 and other IPs will get scores between 0 and 100 depending on the fee they have quoted. Take an example:

| IP | Fee quoted (Rs.) | Difference (Rs.) between the highest fee and the fee quoted by the IP | Formula | Score (F) |
|----|------------------|---|-----------------------|-----------|
| 1 | 2000 | 10000 | $10000 / 10000 * 100$ | 100 |
| 2 | 4000 | 8000 | $8000 / 10000 * 100$ | 80 |
| 3 | 6000 | 6000 | $6000 / 10000 * 100$ | 60 |
| 4 | 8000 | 4000 | $4000 / 10000 * 100$ | 40 |
| 5 | 10000 | 2000 | $2000 / 10000 * 100$ | 20 |
| 6 | 12000 | 0000 | $0000 / 10000 * 100$ | 00 |

13. Illustrations

Illustration 1

If an IP has 80 of volume of ongoing assignments and has quoted a fee of Rs.6000, it will get a X of 50:

$$X = W1 V + W2 F = 0.5 * 40 + 0.5 * 60 = 20 + 30 = 50.$$

Illustration 2

If an IP has 60 of volume of ongoing assignments and has quoted a fee of Rs.8000, it will get a X of 50:

$$X = W1 V + W2 F = 0.5 * 60 + 0.5 * 40 = 30 + 20 = 50.$$

14. The process in Para 7 to 12 will be undertaken by a team of officers of the Board, as may be identified by a Whole-Time Member. The IP getting the highest score of X will be recommended by the Board. If two IPs get the same score of X, the name of the IP will be decided by draw of lottery. The recommendation of an IP will be made with the approval of an Executive Director of the Board.

15. Review

These guidelines will be reviewed by the Board from time to time.

16. For the purpose of these Guidelines,

(a) 'CIRP' includes Fast Track CIRP; and

(b) 'Disciplinary Proceeding' means a proceeding initiated by a show cause notice issued under section 219 of the Code.

Form A
EXPRESSION OF INTEREST TO ACT AS AN
IRP of the CIRP of
 (Reference under Order dated of Bench of NCLT)

| | | |
|----|---|--------------------------------|
| 1. | Name of Insolvency Professional | |
| 2. | Registration Number | |
| 3. | Address and contact details, as registered with the Board: a. E-mail b. Mobile c. Address | |
| 4. | Number of ongoing assignments in hand: a. As IRP of CIRP b. As RP of CIRP c. As IRP of Fast Track d. As RP of Fast Track e. Liquidation / Voluntary Liquidation f. Individual Insolvency g. Bankruptcy Trustee | |
| 5. | Whether IP has been convicted at any time in the last three years by a court of competent jurisdiction? (Give details) | |
| 6. | Whether any disciplinary proceeding is pending against the IP? (Give details). | |
| 7. | Whether IP fulfils the eligibility criteria under regulation 3 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or applicable regulations in respect of the corporate debtor? | |
| 8. | Whether IP is located, as per his address registered with the Board, in the vicinity of the corporate debtor? | |
| 9. | Fees (All-inclusive fees excluding out-of-pocket expenses) required by the IP. | Rs. (both in figure and words) |

Declaration

I hereby confirm and declare that the information given herein above is true and correct to the best of my knowledge and belief. I hereby express my interest to act as IRP, if appointed by the Adjudicating Authority.

Signature of Insolvency Professional

Place:

Date: