

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

17th November, 2025

Discussion Paper – Strengthening safeguards and transparency in the CIRP

The Insolvency and Bankruptcy Code, 2016 (Code/IBC), provides a consolidated framework for reorganisation and insolvency resolution of corporate persons in a time-bound manner. Experience from its implementation, together with judicial pronouncements and stakeholder feedback, has highlighted certain practical and procedural gaps that warrant regulatory refinement to further strengthen transparency, accountability, and consistency in the conduct of the corporate insolvency resolution process (CIRP).

2. Recent experience indicates that while the framework has been effective in preserving value, certain instances of procedural discretion and unregulated decision-making have led to concerns regarding the integrity of the process. Also, there is further need to facilitate the allottees in real estate cases. This Discussion Paper sets out certain targeted measures aimed at enhancing procedural rigour and transparency in the CIRP framework. The paper contains the following key proposals:

- 1. Disclosure of allottees in the Information Memorandum and their treatment in the Resolution Plan.**
- 2. Disclosure of receivables, JDAs and information on assets which are under attachment, in the Information Memorandum.**
- 3. Safeguard where no financial institution is represented in the CoC.**
- 4. Mandatory recording of reasons by CoC for recommending liquidation.**

This paper aims to strengthen safeguards and enhance transparency in the conduct of the CIRP by addressing gaps in disclosure, decision-making, and procedural consistency across key stages of the process.

3. Public comments: The Insolvency and Bankruptcy Board of India (IBBI/Board) accordingly solicits comments on the proposals discussed above and the draft regulations proposed above. After considering the comments, the Board proposes to make regulations under clauses (aa) and (t) of sub-section (1) of section 196 of the Code. The process for submission of comments is provided at **Page 8**.

4. The last date for submission of comments is **8th December, 2025**.

Proposal 1 – Disclosure of allottees in the Information Memorandum and their treatment in the Resolution Plan

Statement of Problem

Under the existing framework, only those claims that are formally submitted by creditors are included in the Information Memorandum (IM) and considered in the resolution plan. In many real estate insolvency cases, several allottees whose details are duly reflected in the corporate debtor's books of account do not file claims within the prescribed time period. Consequently, such allottees are excluded from both the IM and the resolution plan.

2. The exclusion of such allottees also causes practical difficulties at the stage of plan implementation, when non-filing homebuyers subsequently approach the resolution professional or the successful resolution applicant seeking inclusion, resulting in uncertainty, delay, and avoidable litigation.

3. The Hon'ble NCLAT in the matter of *Puneet Kaur vs. K V Developers Private Limited & Ors.* [CA(AT)(Ins.) No. 390 of 2022], had also observed that:

“... we are of the view that the claim of those Homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor, ought to have been included in the Information Memorandum and Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan. Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen in the present case.” (para 33)

This case was also relied by Hon'ble Supreme Court in the matter of *Amit Nehra & Anr. vs. Pawan Kumar Garg & Ors.* [Civil Appeal No. 4296 of 2025].

Proposed Solution

4. To ensure fairness, transparency, and parity of treatment among all genuine homebuyers, it is proposed that -

- a) the Information Memorandum shall include the details of all allottees, including their names, amounts due, and units allotted, as reflected in the corporate debtor's records, irrespective of whether such allottees have filed claims; and
- b) the resolution plan shall provide for treatment of such allottees.

Proposed Draft Regulation

5. In regulation 36(2), after clause (j), insert (ja):

“(ja) details of all allottees, including their names, amounts due, and units allotted, whose claims are reflecting in the books of accounts of the corporate debtor, but have not submitted their claims to the resolution professional.”

6. After regulation 38, the following regulation shall be inserted, namely:-

“38A. Treatment of allottees not filing claims.

In respect of a real estate project, where the details of allottees are reflected in the books of accounts of the corporate debtor but such allottees have not submitted their claims, the resolution plan shall provide for treatment of such allottees in the resolution plan.”

Proposal 2 – Disclosure of receivables, JDAs, information on assets under attachment in the IM

Statement of Problem

The existing provisions of the CIRP Regulations prescribe comprehensive disclosure requirements for preparation of the Information Memorandum (IM). However, in practice, it has been observed that IMs in several cases do not reflect the true and fair financial and operational position of the CD. The quality and completeness of disclosures vary significantly across processes.

2. In particular, critical details such as trade receivables, rights under joint development agreements (JDAs) and information of assets which are under attachment by enforcement agencies are either inadequately captured or entirely omitted from the IM.
3. The lack of disclosure of such rights, particularly under JDAs, also runs contrary to the observations of the Hon'ble Supreme Court in *Victory Iron Works Ltd. v. Jitendra Lohia & Anr.* [Civil Appeal No. 1743 of 2021], wherein the Court observed as follows -

“....the development rights created in favour of the Corporate Debtor constitute “property” within the meaning of the expression under Section 3(27) of IBC. At the cost of repetition, it must be recapitulated that the definition of the expression “property” under Section 3(27) includes “every description of interest, including present or future or vested or contingent interest arising out of or incidental to property”. Since the expression “asset” in common parlance denotes “property of any kind”, the bundle of rights that the Corporate Debtor has over the property in question would constitute “asset” within the meaning of Section 18(f) and Section 25(2)(a) of IBC.”

4. Such incomplete disclosure leads to information asymmetry between the creditors and the prospective resolution applicants. As a result, bidders are unable to make fully informed assessments of the corporate debtor's asset base and potential recoverable value. This not only undermines transparency and diligence in the resolution process but also leads to suboptimal or distorted valuations, and erosion of realisable value for stakeholders.

Proposed Solution

5. To enhance transparency and ensure a true and fair representation of the corporate debtor's financial position, it is proposed to strengthen the disclosure requirements under regulation 36(2) of the CIRP Regulations by expressly mandating inclusion of certain key information items in the Information Memorandum (IM). Specifically, the IM shall include —

- (a) Details of receivables of the corporate debtor, including trade receivables, inter-corporate receivables, and receivables arising under any contract;
- (b) Details of Joint Development Agreements (JDAs) and other similar collaboration or co-development arrangements, including rights, obligations, and interests of the corporate debtor arising thereunder; and
- (c) Details of assets which are under attachment by enforcement agencies, including particulars of the assets attached, the authority under which such attachment has been

made (such as the Enforcement Directorate, Income Tax Department, or other statutory authorities) and the status of such proceedings.

Proposed Draft Regulation

6. In regulation 36(2), after clause (a), the following clauses shall be inserted, namely:

*“(aa) Details of **receivables** of the corporate debtor, including trade receivables, inter-corporate receivables, and receivables arising under any contract;*

*(ab) Details of **Joint Development Agreements (JDAs)** and other similar collaboration or co-development arrangements, including rights, obligations, and interests of the corporate debtor arising thereunder; and*

*(ac) Details of **assets which are under attachment by enforcement agencies**, including particulars of the assets attached, the authority which has attached and the status of such proceedings.”*

Proposal 3 – Safeguard where no financial institution is represented in the CoC

Statement of Problem

In certain CIRPs, no financial institution (as defined under section 3(14) of the Code) is represented in the CoC, and a single unregulated financial creditor holds over 66 per cent of the voting share, effectively controlling all decisions. The absence of regulated institutional participants limits rigour and discipline in CoC deliberations.

Proposed Solution

2. To safeguard the integrity of decision-making in such cases, it is proposed that—

- Where no financial institution is represented in the CoC and a single unregulated financial creditor holds more than 66 per cent of voting share, the resolution professional (RP) shall invite the five largest operational creditors (by admitted claim value) to attend CoC meetings as observers.
- Such observers shall be entitled to receive notice, agenda, and minutes, and may participate in deliberations without voting rights.
- All decisions taken by such CoCs shall be recorded with detailed reasons in the minutes.

Proposed Draft Regulation

3. Insertion of new regulation 16E in the CIRP Regulations

“16E. Safeguard where no financial institution is represented in the committee.

Where no financial institution, as defined under clause (14) of section 3 of the Code, is a member of the committee, and any other financial creditor solely holds more than sixty-six per cent of the voting share, the resolution professional shall invite the five largest operational creditors by value of admitted claims to attend the meetings of the committee as observers and shall record their observations, if any, in the minutes.”

Proposal 4 – Mandatory recording of reasons by CoC for recommending liquidation

Statement of Problem

It has been observed that, in certain CIRPs, the CoC has recommended liquidation despite receipt of compliant and viable resolution plans, sometimes having value even more than liquidation value of assets of corporate debtor. In many such cases, the minutes of CoC meetings do not record the rationale for recommending liquidation. Regulation 40D currently provides that the CoC *may* record considerations for liquidation but does not make it mandatory.

Proposed Solution

2. To enhance accountability, it is proposed that in cases where a compliant resolution plan of value greater than the liquidation value has been received, and the CoC nonetheless recommends liquidation, the reasons for such recommendation must be mandatorily recorded in the minutes and furnished along with the liquidation application.

Proposed Draft Regulation

3. Amendment to Regulation 40D by insertion of sub-regulation (3), as below:

“(3) In cases where a compliant resolution plan of value more than the liquidation value was received, the reasons for recommendation for liquidation of the corporate debtor shall be recorded and submitted in the application for liquidation filed by the resolution professional before the Adjudicating Authority.”

This amendment reinforces the principle of reasoned decision-making and ensures transparency in cases where liquidation is preferred over viable resolution.

Process for submission of Public Comments

The comments may be submitted electronically by **8th December, 2025**. For providing comments, please follow the process as under:

- i. Visit IBBI website at www.ibbi.gov.in;
- ii. Select '**Public Comments**';
- iii. Select '**Discussion paper – Process Division - November 2025**'
- iv. Provide your Name and Email-ID;
- v. Select the stakeholder category, namely, -
 - a. Corporate Debtor;
 - b. Personal Guarantor to a Corporate Debtor;
 - c. Proprietorship firms;
 - d. Partnership firms;
 - e. Creditor to a Corporate Debtor;
 - f. Insolvency Professional;
 - g. Insolvency Professional Agency;
 - h. Insolvency Professional Entity;
 - i. Academics;
 - j. Investor; or Others.
- vi. Select the kind of comments you wish to make, namely, \
 - a. General Comments; or
 - b. Specific Comments.
- vii. If you have selected 'General Comments', please select one of the following options:
 - a. Inconsistency, if any, between the provisions within the regulations (intra regulations);
 - b. Inconsistency, if any, between the provisions in different regulations (inter regulations);
 - c. Inconsistency, if any, between the provisions in the regulations with those in the rules;
 - d. Inconsistency, if any, between the provisions in the regulations with those in the Code;
 - e. Inconsistency, if any, between the provisions in the regulations with those in any other law;
 - f. Any difficulty in implementation of any of the provisions in the regulations;
 - g. Any provision that should have been provided in the regulations, but has not been provided; or
 - h. Any provision that has been provided in the regulations but should not have been provided.And then write comments under the selected option.
- viii. If you have selected 'Specific Comments', please select Proposal Number on which you want to give the comment, and write comments under the selected Proposal Number.
- ix. You can make comments on more than one Proposal, by clicking on more comments and repeating the process outlined above from point (vi) onwards.
- x. Click 'Submit' if you have no more comments to make.
