

Discussion Paper on Review of Grievance Redressal and Enforcement Framework and Rationalisation of Timelines Regarding Authorisation for Assignment

The Insolvency and Bankruptcy Code, 2016 (Code/ IBC) provides for a robust grievance redressal and enforcement framework for the service providers. Additionally, there are eligibility requirements and processing timelines for issuance or renewal of authorisation for assignment (AFA) by the insolvency professional agency (IPA), which is mandatory for the Insolvency Professionals (IPs) for accepting or conducting assignments under the Code. To enhance clarity in the conduct of insolvency processes, foster a more conducive redressal and enforcement ecosystem for stakeholders and improve operational efficiency in AFA processing, this paper seeks to review/clarify the following areas: -

- (a) Association of Whole-time member in the Disciplinary Committee (DC) with Investigation or Inspection
- (b) Timeline for filing of grievance or complaint to the IBBI
- (c) Rationalisation of timelines regarding application and processing of AFA by the IPAs

I. Association of Whole-time member in the DC with Investigation or Inspection

Background

2. Section 220(1) read with regulation 2(1)(c) of the IBBI (Inspection and Investigation) Regulations, 2017 (I & I Regulations) requires that the whole-time member(s) in the DC should not be associated with the investigation or inspection concerning matters subject to adjudication by the DC.

3. The extant redressal and enforcement framework under the Code read with I & I Regulations and IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 (GCHP Regulations) provides for the manner of initiation and conduct of investigation and inspection by the Board. Upon consideration of investigation or inspection reports or material available on record, the matter is referred to the DC for appropriate action or disposal of show cause notice issued against the service provider.

Issue

4. One critical issue emerging from the existing framework is the potential ambiguity in interpreting the nature and scope of association of whole-time member(s) in the DC regarding matters subject to adjudication. The principles of impartiality and fairness, and separation of powers are essential to upholding the integrity of the quasi-judicial process. Although the extant administrative design and delegation of powers and responsibilities within the Board aim to ensure adherence to these principles, it is considered expedient to clarify the meaning and scope of association of whole-time member(s) in the DC to ensure a transparent, independent quasi-judicial process aligned with procedural fairness.

Proposal

5. To clarify the meaning and scope of association of whole-time member(s) in the DC in the context of matters being adjudicated by them vis-a-vis the investigation or inspection conducted by the Board or otherwise material available on record, it is being proposed to add an explanation to the definition of DC under the I & I Regulations to clarify that “associated”

shall mean involvement in the conduct of investigation or inspection or consideration of the investigation or inspection report or issuance of show cause notice. This proposal is intended to resolve ambiguity, ensure independence and reinforce the principles of impartiality, fairness, and separation of powers in the enforcement framework.

II. Review of Timeline for Filing of Grievance or Complaint

Background

6. Section 217 of the Code read with IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 (GCHP Regulations) provides procedure for and manner of filing and disposal of complaints and grievances against the service provider(s), which includes IPs, IPAs, and IUs with IBBI.

Issue

7. Presently, grievances or complaints must be filed by the stakeholder within forty-five days of the occurrence of the cause of action for the grievance or the complaint. This time limit is extendable for a maximum period of 30 days, if there are sufficient reasons justifying the delay.

8. Grievances or complaints may be filed by a range of stakeholders as defined under regulation 2(1)(j) of the GCHP Regulations, encompassing debtors, creditors, claimants, service providers, resolution applicants, and any other person having an interest in the insolvency, liquidation, voluntary liquidation, or bankruptcy transaction/ proceedings under the Code. While key stakeholders like debtor, members of the committee of creditors or the consultation committee, etc. are typically more involved in the day-to-day process and may promptly recognize issues, other stakeholders like operational creditors (suppliers, contractors, government authorities), creditors in a class (allottees under a real estate project, fixed deposit holders, debenture holders), employees, workmen, etc. may face challenges in identifying or understanding intricacies of the processes.

9. The Stakeholders may experience delays in filing grievances or complaints beyond the stipulated 45-day timeline due to various factors, including limited awareness of the processes, ambiguity in interpretation, procedural complexities, geographical challenges, and restricted resources, particularly among smaller stakeholders. Some contraventions may not be immediately evident and may require gathering relevant documents or obtaining expert opinions. The continuity of the process can also complicate the identification of a specific timeline for cause of action. Additionally, the grievance or complaint may also involve broader public interest issues affecting a larger group of stakeholders. Consequently, extending the filing period would ensure that such instances are adequately reported and fairly addressed.

10. A robust grievance redressal mechanism is essential for ensuring that stakeholders have a reliable platform to raise concerns, while holding service providers accountable for their conduct. This process allows stakeholders to protect their interests and serves as an important oversight mechanism for the Board, covering matters of compliance, conduct, and broader regulatory issues. At the same time, it is imperative to ensure a reasonable period of time for filing of grievance or complaint to prevent abuse of the process after it has attained finality upon its closure by an order. The service provider may not be in a position to redress the grievance after closure of the process. And in those circumstances the aggrieved or complainant is always at the liberty to exercise other judicial remedies against its grievance or complaint.

11. Thus, extending the timeline for filing of grievance or complaint until the closure of the process offers stakeholders additional time to raise concerns and report on conduct, supporting timely disciplinary actions when necessary. Additionally, providing a reasonable period for

grievances after the process concludes ensures that issues affecting the finality of decisions are raised promptly, preserving the stability of outcomes while respecting stakeholders' access to fair redressal.

Proposal

12. In the interest of public accountability and transparency, it is necessary to reassess the current restrictive timeline for filing grievances or complaints. Allowing grievances to be addressed during the process or immediately after its conclusion facilitates timely action against any misconduct and strengthens the redressal mechanism. It is therefore proposed to extend the time limit for filing grievances or complaints to 30 days from the closure of the process by an order of the Adjudicating Authority, Appellate Authority or a Court. This extension would grant stakeholders an appropriate timeframe to report concerns, while also preserving a reasonable period for the service provider post-closure. This approach aims to enhance efficiency and responsiveness within the grievance redressal system, benefiting stakeholders and the Board without imposing additional costs.

III. Rationalisation of Timelines Regarding Authorisation for Assignment

Background

13. An IP is required to hold a valid AFA issued by the IPA with which it is enrolled for accepting or undertaking an assignment under the Code. The IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (Model Bye-laws Regulations) *inter alia* stipulate the eligibility requirements, timelines for submission of application for issuance or renewal of AFA, approval or rejection of such application by IPA, validity of AFA and provision for appeal against rejection, if any.

14. Under clause 12A(3) of schedule to the Model Bye-laws Regulations, an IP can submit the application for renewal of AFA only within 45 days before the expiry of ongoing AFA. Further, in terms of clause 12A(5), the IPA is required to approve (issuance or renewal) or reject the application within 15 days of date of receipt of application. There is provision for deemed approval of application, if not approved or rejected within the 15 days' timeline.

Issue

15. The IPs are required to meet the specific eligibility requirements for issuance or renewal of AFA which *inter alia* include fit and proper person criteria, absence of disciplinary proceedings, compliance to guidelines on continuous professional education, fee compliances, process related forms filing compliances and disclosures. The IPAs are required to conduct due diligence on IP compliances on these requirements while processing the applications for renewal of AFA. The timelines are crucial in the process of approval or rejection as there are provisions for deemed approval and the rejections, if any, shall be with a reasoned order. Over the past two financial years, the IPAs have processed an average of 1200 applications annually.

16. Based on experience gained in processing AFA applications and the due diligence required, it is considered expedient to review the abovementioned timelines. The IPs may be provided greater flexibility to apply for renewal of AFA well in advance to maintain continuity of their AFA. Moreover, since the IPAs are required to approve or reject the application based on review of compliance requirements, the timelines for processing may be relaxed so as to provide sufficient time for IPAs for seamless verification so as to avoid any instance of deemed approval and to provide reasoned orders for the rejection of applications, if any.

Proposal

17. In the interest of operational efficiency and greater flexibility to the IPs and IPAs, it is proposed to relax the following timelines:

(a) Submission of application for renewal of AFA to IPA [Clause 12A(3)]: The timeline is proposed to be relaxed from existing 45 days before the date of expiry of previous AFA to 90 days before the data of expiry of previous AFA.

(b) Approval or Rejection of AFA Application (Issuance or Renewal) by the IPA [Clause 12A(5)]: The timeline is proposed to be relaxed from existing 15 days from date of receipt of application to 45 days from date of receipt of application.

18. The relaxation of timelines would ensure operational efficiency at the IPA level while providing IPs with greater flexibility in ensuring the continuity of their AFA. No additional costs are envisaged to be incurred by the IPs, IPAs or the Board.

Public comments

19. The Board accordingly solicits comments on the proposal discussed above and the draft I & I Regulations, GCHP Regulations and Model Bye-laws Regulations placed in the **Annexure** in terms of regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. After considering the comments, the Board proposes to make regulations under clauses (a), (aa), (b), (f), (g), (q) and (t) of subsection (1) of section 196 of the Code.

Submission of comments

20. Comments may be submitted electronically by 10th December, 2024. For providing comments, please follow the process as under:

i. Visit IBBI website, www.ibbi.gov.in;

ii. Select 'Public Comments';

iii. Select 'Review of Redressal, Enforcement Framework and AFA Timelines'

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 k) 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.
- viii. And then write comments under the selected option.

28.1. If you have selected 'Specific Comments', please select para number and write comments under the selected para number.

28.2. You can make comments on more than one para, by clicking on more comments and repeating the process outlined above from point 28.

28.3. Click 'Submit' if you have no more comments to make.

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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

NOTIFICATION

New Delhi, theNovember, 2024

Insolvency and Bankruptcy Board of India (Inspection and Investigation) (Second Amendment) Regulations, 2024

No. IBBI/2024-25/GN/.—In exercise of the powers conferred under sections 196, 217, 218, 219, 220 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, namely: -

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Inspection and Investigation) (Second Amendment) Regulations, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (hereinafter referred to as ‘the principal regulations’), in regulation (2), in sub-regulation (1), in clause (c), after the proviso the following explanation shall be inserted, namely:-

“*Explanation:* It is hereby clarified that “associated” shall mean involvement in the conduct of investigation or inspection or consideration of the investigation or inspection report or issuance of show cause notice.”

RAVI MITAL, Chairperson
[ADVT. -]

Note: The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 were published vide Notification No. IBBI/2017-18/GN/REG011 on 12th June, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 239 dated 12th June, 2017 and were last amended by the Insolvency and Bankruptcy Board of India (Inspection and Investigation) (Amendment) Regulations, 2024 published vide Notification No. IBBI/2024-25/GN/REG115, dated the 13th August 2024 in the Gazette of India, Extraordinary, Part III, Section 4, No. 617 on 13th August 2024.

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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

NOTIFICATION

New Delhi, theNovember, 2024

**Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure)
(Amendment) Regulations, 2024**

No. IBBI/2024-25/GN/ In exercise of the powers conferred under sections 196, 217 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017, namely: -

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) (Amendment) Regulations, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017, in regulation 3, in sub-regulation (4), in the proviso, the words “exceed 30 days” shall be substituted with the following:-

“exceed 30 days from the date of closure of the process under the Code by an order of the Adjudicating Authority, the Appellate Authority, the High Court, or the Supreme Court, as the case may be.”

RAVI MITAL, Chairperson
[ADVT. -]

Note: The Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 were published vide Notification No. IBBI/2017-18/GN/REG/21 dated 06th December, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 461 dated 07th December, 2017 and were last amended by the IBBI (Grievance and Complaint Handling Procedure) (Amendment) Regulations, 2022 published vide Notification No. IBBI/2022-23/GN/REG086, dated the 13th August 2024 in the Gazette of India, Extraordinary, Part III, Section 4, No. 304 on 14th June 2022.

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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

NOTIFICATION

New Delhi, the ... November 2024

Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2024

No. IBBI/2024-25/GN/.—In exercise of the powers conferred by sections 196 and 205 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, namely: -

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, in the Schedule, in para VI, in clause 12A-

(i) in the proviso to sub-clause (3), for the words “forty-five”, the word “ninety” shall be substituted.

(ii) in sub-clause (5), for the word “fifteen”, the word “forty-five” shall be substituted.

RAVI MITAL, Chairperson
[ADVT.-]

Note: The Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 were published *vide* notification No. IBBI/2016-17/GN/REG001 dated 21st November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 421 on 22nd November, 2016 and were last amended by the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2024 published *vide* notification No. IBBI/2023-24/GN/REG111 dated 31st January 2024, in the Gazette of India, Extraordinary, Part III, Section 4, No. 75 on 31st January 2024.