

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
7th Floor, Mayur Bhawan, Connaught Place, New Delhi - 110001

29th September, 2020

Subject: Invitation of Expression of Interest for Research Study on Individual Indebtedness and Insolvency

I. BACKGROUND

1. In four years since the enactment of the Insolvency and Bankruptcy Code, 2016 (Code), the entire ecosystem comprising the Adjudicating Authority (AA), the Insolvency and Bankruptcy Board of India (IBBI), Insolvency Professional Agencies, Insolvency Professionals, Information Utilities, Registered Valuers Organisations and Registered Valuers has been in place. The provisions relating to corporate insolvency resolution, including fast track resolution, corporate liquidation and voluntary liquidation have been operationalised with considerable success. The behavioural changes, as anticipated from the Code, is clearly visible on the ground. It is time now to focus on the next big thing, the individual insolvency.

2. Individual insolvency framework pursues the objectives enshrined in the Code. It prevents creditors from harming the debtor by racing to be the first to recover their dues, and thereby facilitates resolution of insolvency. It facilitates an individual to get in and get out of business, undeterred by honest business failure, and thereby promotes entrepreneurship. It increases creditor's expected returns and thereby promotes availability of credit. It does not take away future income of the debtor after fresh / earned start and thereby does not undermine incentive to work. It relieves the debtor of the burden of debt and isolates minimum assets for his subsistence, while improving the prospects of realisation for creditors, thereby ensuring fairness and equity. These objectives are extremely important in the Indian context, where proprietorship and partnership firms have significant contribution to income and employment, and informal financial creditors (FCs) account for a significant share of credit.

Part III

3. Part III of the Code provides for three processes for individual insolvency resolution, on default of a threshold amount:

(a) **Fresh Start Process:** This is available only to those debtors who have an annual income \leq Rs.60,000, assets \leq Rs.20,000, debts \leq Rs.35,000 and do not have a dwelling unit. Only the debtor can file an application for fresh start for discharge of his debt. A resolution professional (RP) examines the application and submits a report to the AA, recommending acceptance or rejection of the application. On consideration of the report of the RP, the AA passes an order, either admitting or rejecting the application. If the application is admitted, the creditors have an opportunity to object to the process on limited grounds. On conclusion of the process, the AA passes an order for the discharge of the debtor or revokes the admission of the application. The discharge order writes off the qualifying debts, allowing the debtor to start afresh, subject to an entry in the credit history.

(b) Insolvency Resolution Process: This provides a framework for the debtor and creditors to collectively renegotiate a repayment plan under the supervision of an RP. The debtor or a creditor may make an application for initiation of the process. If the application is admitted by the AA, a public notice is issued inviting claims from all creditors. The debtor then prepares a repayment plan, in consultation with the RP. If the plan is approved by 75% of the voting share of the creditors, and thereafter by the AA, the RP supervises its implementation. On execution of the repayment plan, the AA issues a discharge order releasing the debtor from its liability in terms of the plan, and the debtor gets an ‘earned start’.

(c) Bankruptcy Process: If resolution process fails or repayment plan is not implemented, the debtor or creditor may make an application for the initiation of bankruptcy process. If the application is admitted, the AA passes a bankruptcy order and appoints a bankruptcy trustee, followed by an invitation of claims from creditors. The bankruptcy trustee investigates the affairs of the bankrupt, realises the estate of the bankrupt and distributes the proceeds in accordance with the priority provided in the Code. He submits a report of administration of the estate of the bankrupt to the committee of creditors for approval. On expiry of one year from the bankruptcy commencement date or within seven days of the approval by the committee of creditors, whichever is earlier, the bankruptcy trustee applies for a discharge order and the AA passes a discharge order. This discharge order releases the debtor from the bankruptcy debt. The bankrupt, however, suffers certain disabilities during the period of bankruptcy process.

Code vis-à-vis Erstwhile Framework

4. Presently, the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, are in force. The Code makes several improvements over these two enactments. With its focus on rehabilitation of the debtor as opposed adjudging him as insolvent, the Code: (a) provides an objective trigger for initiation of insolvency resolution process instead of relying on the commission of an ‘act of insolvency’; (b) mandates a moratorium which provides a breathing space for the debtor and creditors to negotiate a repayment plan; (c) uses independent and qualified professionals to assist the stakeholders and the AA in conduct of processes; (d) prescribes a linear process, in which bankruptcy typically follows the failure of the insolvency resolution process; (e) enables automatic discharge instead of requiring that discharge be granted by the AA on the satisfaction that the insolvent has conducted himself well in the run up to and during insolvency; (f) provides a more comprehensive regime, including a debt relief in the form of ‘fresh start’, and keeps certain assets of the debtor beyond the reach of creditors for the subsistence of the debtor.

II. RESEARCH QUESTIONS

5. While Part III of the Code is yet to be enforced, other than the provisions related to personal guarantors to corporate debtors, it is important to study some aspects of individual insolvency to be better able to implement the three processes of tackle individual insolvency laid down in the Code. Some research questions around this area, in the Indian context, which need to be studied are:

5.1 Individual insolvency and bankruptcy

- (a) What are the levels and category of personal debts?
- (b) Sources of raising personal debt and associated cost in terms of debt repayment and interest thereon?
- (c) What is the socio-economic categorization of such personal debt?
- (d) Debt servicing as proportion to income and assets.
- (e) What has been the experience with the debt waivers? Has it ensured that individuals become “debt free”?
- (f) Are current policies of direct subsidy transfer and other direct benefits in terms of crop insurance, personal medical facilities, houses under PM Awas Yojana is helping in relation to better debt management of individuals?
- (g) One chronic medical problem can restart the cycle for bankruptcy again in a family (families could have avoided bankruptcy if only they had health insurance). In this context is the lack of health insurance correlated with personal insolvency?
- (h) Is filing for bankruptcy effective solution to financial distress? Does individual bankruptcy offer families a better financial future?
- (i) Causes of financial distress? Is it the gap between income and expenses or lack of an effective insolvency and bankruptcy mechanism/fresh start framework? The metric of debt service and financial resilience of households may be developed to gather data on these parameters to analyse vulnerability and preparedness.
- (j) What are the levels of monthly income and expenditure of typical households and median gap which results in stress to borrowers?
- (k) What measures can be taken to complement the individual insolvency legislative regime to ensure best post-bankruptcy results, such as a national health care system or guaranteed access to affordable private health insurance or income guarantee etc.?
- (l) Does the law, as laid out in the Code, need to be revisited to ensure its better usage by individuals? What should be the contours of the revisions in the legal framework?
- (m) Alternatively, can the requirements be met through changes in the regulations framed under the Code?

5.2 Fresh Start Process

- (a) What are the likely number of individuals/households who would be eligible for fresh start process (FSP), as laid down under the Code?
- (b) Likely impact of FSP on credit discipline and loan repayment psychology.
- (c) Should the FSP be parallelly supported with income guarantee and health insurance guarantee schemes for the successful results after post-Bankruptcy period of the debtor?
- (d) **Population and bankruptcy interlinkages** - 27.6% of Indian population as per Census 2011, is concentrated in the age group 25-44 and 13.5% of the population is in the age group of 45-64 years. Middle aged group is perhaps the most affected age group post-bankruptcy as they have little chances to resettle their incomes. In this context India having 41.1% of population in middle age, large number of applications under FSP may be expected. Also, these applications may be repetitive from these age groups. Thus, the relationship between age and income change may be closely examined.

- (e) What would be the impact of literacy levels and financial education vis-a-vis implementing FSP (considering many low-income families qualify for this process and given the stigma associated on the term bankrupt)?
- (f) What safeguards/compliances and parallel legislations would be required to prevent the abuse or misuse of the debt discharge process in the form of the FSP under the Code?

III. ELIGIBILITY

6. Institutions/Organisations/Agencies which are registered under the statute of the Central or State Governments such as Societies Act, Trust Act, Co-operatives Act, Companies Act, etc with normally three years research experience after registration or UGC approved academic/research institution engaged in research activities and fulfilling the following Expertise and Standing specifications will be eligible to apply for undertaking this research study.

Specifications of Standing:

- (a) Applicant (Institution/Organisation/Agency) must have distinctive merit and academic repute in the research domain.
- (b) Applicant (Institution/Organisation/Agency) must have been working in research/ survey projects in the past for at least three years preceding; and
- (c) Educational qualifications and research capabilities of the full-time professionals and technical human resources should commensurately reflect domain knowledge.

Expertise, wherewithal, and level of commitment:

The Institution/Organisation/Agency must:

- (a) possess expertise in designing research and statistical analysis for economic interpretation;
- (b) be equipped with hardware and tools for handling large-scale data; and
- (c) be able to dedicate experts/ professionals during the period of the research/survey project so as to ensure adequate levels of commitment and timeliness in delivery of the results.

7. Individual applicant not attached to/with any such Institution/Agency/Organisation and also applicants retired from the aforesaid Institution/Agency/Organisation and with proven levels of commitment and research expertise on the relevant subject will also be considered for this research study. However, the individual applicant shall engage himself/herself on a whole-time basis and shall not accept any other assignment during the period of study without the prior permission of the IBBI.

8. Provided that the condition of whole-time engagement with this research study shall be of relevance only to applicants not attached to/with any Institutions/Agency/organisations and also to applicants retired from such institution/Agency/Organisation.

9. Breach of any condition contained in the sanction letter, or suppression of any material fact concerning the eligibility/ ineligibility of an applicant would render the defaulting party liable for being black-listed or debarred from receiving any funding under this research study.

10. The Institution/Organization/Agency/Individual may publish the research work undertaken under this research study of the IBBI after prior approval, provided specific mention should be in the publication about funding by the IBBI, data access, guidance and advice rendered by Expert Committee (EC) in shaping/finalizing the research report, etc.

11. **The timeline of the research study will be a maximum of one year.** However, upon a request from the funded institution/individual, the IBBI may consider/grant extension of time to complete the research report in a special circumstance, as recommended by the EC.

IV. APPROVAL PROCESS

12. Eligible proposals received from the applicants will be placed before the EC comprising of:

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| Chairperson, IBBI | Chairperson |
| Whole Time Member, IBBI (Individual insolvency division) | Member |
| Two External experts * | Members |
| Executive Director, IBBI (Individual insolvency division) | Convenor |

** Experts having domain knowledge and expertise in the area*

13. The EC may accept/reject any proposal fully or partly and require modification of any component including the scope, coverage, methodology, timelines, deliverables, or time or venue, as the case may be, while shortlisting the proposals for funding under the scheme.

14. The shortlisted proposals will be called to submit their financial bids to undertake the study. These will be examined by the EC based on the details of their methodology and human resource requirements to undertake the study etc. The EC will then make its recommendations for selection of one proposal for undertaking the research study.

15. The EC may call for progress report on the study/ research undertaken, at periodic intervals, starting from the date of approval/ sanction of the research study.

16. The funded Institution/individual will confirm in writing that the conditions contained in sanction order are acceptable to it. It or he/she will also execute a bond in favour of the IBBI to the effect that it or he/she will abide by the terms and conditions attached to the funding and that in case it or he/she fails to abide by the same, it or he/she will refund to the IBBI the total funding sanctioned to it or he/she for the purpose with interest thereon.

17. The funded Institution/individual will maintain separate accounts in respect of this funding. The accounts will remain open to inspection to the IBBI and the representatives of the Government of India including the Comptroller and Auditor General of India. At the end of the period, the funded Institution/individual will have the accounts of this funding audited by a Government Auditor or a Chartered Accountant, and supply a copy of the audited accounts, together with a utilisation certificate to the IBBI. Any unspent balance out of this funding will be refunded to IBBI by the funded Institution/individual immediately.

V. MANNER OF DISBURSAL OF ASSISTANCE

18. The IBBI will issue the sanction order for funding to the research study of the finally selected Institution/Organization/Agency/Individual.

19. If a research study is proposed to be part- funded by other organisation(s) also, the details thereof shall be submitted as early as possible, and in no case later than two weeks after the funding from the other organisation(s) is/are confirmed.

20. The expenditure will also include travel, accommodation cost and other logistics of external Experts (as per extant Government of India rules for outside experts), acquiring software, access to databases, advertisement cost etc.

21. The Schedule of disbursement of funding:

(a) First instalment will be 30% of the research study cost after issue of sanction letter and receipt of acceptance letter from the selected Institution/individual.

(b) Second instalment will be 50% of the research study cost on receipt of the preliminary /first draft report, audited statement of accounts, utilisation certificate of the fund released and report of the EC, if necessary; and

(c) Third and final instalment will be 20% of the research study cost which will be released only after:

- the final report of the research study is received and accepted by the EC and the IBBI;
- the audited statement of accounts for all expenditure incurred together with a utilisation certificate is received and is found to be in order; and
- receipt of requisite number of hard and soft copies of complete set of all the document/data sets used and report.

22. The final report of the research study will be submitted by the funded Institution/individual to the IBBI on the completion of the study period.

FORMAT OF RESEARCH REPORT

23. The final report shall cover the following points:

(a) Problem statement:

- Theoretical context;
- Review of existing literature; and
- Statement of the problem, including explanation of key concepts and mention of the hypotheses tested.

(b) Methodology of the study:

- The research design;
- The selection of the universe and the units for study; size of the sample and the procedure for sample draw;
- Tools used; special contribution made by the study in devising new tools or sharpening existing ones;
- Field work; if any, with details including problems encountered, etc.;
- Schedule of the study;
- Organisation structure and problems;
- Methodology gains;
- Limitations of the study; and
- Other observations.

(c) An account of the population/ data studied;

(d) Description and analysis of data, vis-à-vis objectives of the study;

(e) Findings and conclusions:

- Summary of findings;
- Conclusions, including implications for further research; and suggestions for action and for policymaking.

VII. GUIDELINES FOR FORMULATION OF RESEARCH PROPOSAL

25. The requirements of the research study proposal are as under:

- (a) It should be focussed in about 4000-5000 words (excluding footnotes, citations and references).
- (b) The proposal should attempt to enumerate as to how it proposes to address each of the questions posed at para 5 above.
- (c) *Methodology*: In the light of the questions raised or the hypotheses proposed to be tested, full information of the following points should be given:
 - Universe of study;
 - Sampling frame and procedure;

- Units of observation and sample size.

An explanation of the determination of size and type of sample will also be necessary. Proposals not requiring a sample selection should clearly specify their strategy appropriately and described the rationale.

- (d) *Data Processing*: The manner in which the different types of data will be processed, the tabulation plan, and the type of data that will be processed through the software technique will be explained in details.
- (e) Budgeting and Timeline
- (f) *Cost Estimate*: The cost of the research study is to be estimated in terms of total man-months and the facilities needed including cost of purchasing of any data shall be given in a tabular form such as (i) cost for engagement of professional/experts; (ii) cost on travel & accommodation; (iii) cost on acquiring hardware/software; (iv) purchase of databases, etc.

26. After approval of the research proposal by the EC and the IBBI, the funded institution/ individual may make minor changes in the research design, etc in the research proposal, but, no major changes will be made therein unless prior approval of the EC / the IBBI has been obtained.

27. The Research Proposal can be submitted by **9th November, 2020**, online at **research@ibbi.gov.in** and in hard copy to Shri Sushanta Kumar Das, Deputy General Manager, IBBI, 2nd Floor, Jeevan Vihar Building, Sansad Marg, New Delhi - 110001.
