

Discussion Paper on Financial Self-Sufficiency of the Insolvency and Bankruptcy Board of India

Background

The Insolvency and Bankruptcy Board of India (the IBBI/ Board) is one of the four key pillars of the ecosystem responsible for implementation of the Insolvency and Bankruptcy Code, 2016 (the Code). In sync with its objectives, the Code entrusts IBBI with a host of statutory duties and functions. It regulates the profession as well as the processes. The IBBI is also designated as the ‘Authority’ under the Companies (Registered Valuers and Valuation) Rules, 2017 for regulation and development of the profession of valuers in the country. The Bankruptcy Law Reforms Committee (BLRC) in its report dated 4th November, 2015, observed that insolvency and bankruptcy regulation is likely to be a resource intensive function. Hence, the IBBI which is responsible for building and maintaining the credibility of the bankruptcy and insolvency resolution process should be equipped with the capabilities and the resources, required to perform a wide range of functions. It noted that there is need for financial independence which allows the Board to have the required flexibility and human resources. It recommended that the IBBI be funded through a mix of government support and fees collected from regulated entities for the first five years after it comes into being. The Working Group on ‘Building the Insolvency and Bankruptcy Board of India’ in its report issued in December, 2016 suggested that in the initial phase of the building up of the IBBI, budgetary grants from the Government would be the main source of funding. However, it envisaged that in a few years, the contours of the bankruptcy intermediation industry will become visible. Then the IBBI should be able to enforce a fee upon all IPs, IPAs and IUs that will pay for its expenses.

2. At present, the Board is meeting only about 20% of its budgetary requirement from the fee income on Service Providers (including IPs, IPEs, IPAs, IU, RVs, RVEs and RVOs), the examinations (LIE and Valuation) conducted and other income from CIRP Form Filings and frivolous complaints. Majority of fund requirement is thus met from Grant-in Aid received from the Central Government. The following table indicates the actual expenditure incurred by the Board vis-à-vis the internal receipts of the Board and shortfall thereof-

(Rs. in lakh)

Financial Year	Actual expenditure during the year (A)	Internal Receipts during the year (B)	Shortfall (B)-(A)
2016-17	116.13	89.73	-26.40
2017-18	1484.61	330.41	-1154.20
2018-19	2282.47	551.83	-1730.64
2019-20	2665.92	599.22	-2066.70
2020-21	2812.27	690.43	-2121.84
2021-22 *	2735.97	567.58	-2168.39
Total	12097.37	2829.20	-9268.17

**unaudited*

Problem Statement

3. The aforesaid table indicates that IBBI is short of about Rs.21-22 crore, to reach self-sufficiency level. While, IBBI is currently relying on budgetary grant as its main source of funding, there is a need for gradually shifting from current Grant-in-Aid arrangement to a system where the Board recovers all or part of its costs through levy of fees and charges.

Expected increase in expenditure during next five years

4. As the insolvency legislation is expanding its contours of implementation, the organisational capabilities of the Board need to be strengthened. The evaluation of fund requirement of the IBBI during the next five years indicates that the expenditure is expected to increase manifold. The following reasons may be attributed to such envisaged increase in the expenditure:-

- a) The additional regulatory requirement in next five years includes the various areas that are likely to be implemented or would expand their existing contours in the forthcoming years, namely, Pre-packaged insolvency resolution process, Cross-border insolvency, Group insolvency, Use of mediation in insolvency, Fresh start process, Individual insolvency resolution and bankruptcy process.
- b) The need for improvising organisational resources, processes, and infrastructural arrangements. This includes building organizational capabilities in next five years in various areas namely, Human Resource, Deployment of technology and associated infrastructure of the Board in terms of own office space and establishment of regional offices across the country, if required, needs to be assessed.

5. In view of the aforesaid, a need is felt to review the fees/ charges levied by the Board, to ensure adequacy of internal receipts to meet its fund requirements in the forthcoming years and gradually reduce its reliance on the government aid.

Legal framework, International Practice, and other Comparable Regulators in India

6. Clause (c) of Sub-section (1) of Section 196 of the Code empowers the Board to levy fees or other charges for carrying out the purpose of the Code. The purpose of the Code is wide enough that involves wide range of stakeholders who are part of the insolvency resolution and bankruptcy processes.

7. The working groups constituted by the Ministry of Corporate Affairs in July, 2016 has considered the financial model of the Financial Conduct Authority of the United Kingdom (UK) which also charges different type of fee from the firms it authorises and other bodies such as recognised investment exchanges and registered firms.

8. Section 414 of the Insolvency Act, 1986 of UK provides that: (a) in a company insolvency proceeding the competent authority with the sanction of Treasury is empowered to levy fee on various activities involved in the process, & (b) the fee so levied will be deposited in Treasury.

9. In the United States of America, United States Trustee Program's is recovering filing fees from consumer and business debtors as well as quarterly fees based on disbursements from some qualified debtors that are deposited into the United States Trustee System Fund.

10. In case of Securities and Exchange Board of India, Clause (k) of subsection (2) of the Section 11 of Securities and Exchange Board of India Act, 1992 provides that the powers and functions of the Board shall include levying fees or other charges for carrying out the purposes of the said section (similar to the provision provided under the Code).

11. The Hon'ble Court of Madras (HC) in the matter of CA. Venkata Siva Kumar Vs. IBBI & Ors. [W.P. No. 9132/2020 and W.M.P. No. 11134/2020] has upheld the jurisdiction of IBBI to levy fees and charges. While dealing the said petition, HC observed that "... we conclude that the IBBI does provide significant services, including in relation to IPs and that there is broad correlation between fees and services." It further observed that "...From the above, we find that there can be no question whatsoever with regard to the powers of the IBBI to frame regulations with regard to the fee payable by IPs and insolvency professional agencies. As regards the charging of fees as a percentage of

			statements of the preceding financial year)	
			Upto 100 crore	20
			More than 100 crore	10
			The said annual fee shall be payable within one hundred and eighty days from commencement of the respective financial year.	
5.	Enrolment Fee for Examinations			
(i)	Enrolment Fee for Limited Insolvency Examination (One-time)	Rs.1,500/-	Rs.5,000/-	
(ii)	Enrolment Fee for Valuation Examination (One-time)	Rs.1,500/-	Rs.5,000/-	
6	Regulation Fee on Resolution in CIRP			
(i)	Regulation Fee on resolution in CIRP	None	0.25% on the aggregate amounts or its equivalent provided in the resolution plan, where such amount is more than the liquidation value.	

Note-The following illustration may be noted for the annual fee applicable on an IU:

Rates		Scenario-I	Scenario-II
*Revenue from Operations (in Rs.)	Fee on Revenue from Operations (in %)	Rs.120 crore	Rs.90 crore
<i>Upto Rs.100 crore</i>	20	Rs.20 crore	Rs.18 crore
<i>Beyond Rs.100 crore</i>	10	Rs. 2 crore	-
Fee payable to Board		Rs.22 crore	Rs.18 crore

**as reported in the audited financial statements of the preceding financial year.*

Proposed Implementation

13. In view of the aforesaid, it is proposed to amend the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations), IBBI (Information Utilities) Regulations, 2017 (IU Regulations) and IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).

Economic Analysis

14. While, the proposed revision in fee structure would not result in fulfilling of the current budgetary shortfall, however, as an interim measure, it would substantially reduce the dependence of the Board on grants-in-aid. It is noteworthy that over a period of time, the Board would be required to gradually revised the existing fees/ charges levied and/or explore other measures/ avenues to levy fees, in order to achieve financial sufficiency.

Public comments

15. The Board accordingly solicits comments on the proposals discussed above and the draft IP Regulations, IU Regulations, CIRP Regulations, and Press Release (for enrolment fee for examinations) are placed in the **Annexure-A, Annexure-B, Annexure-C, and Annexure-D, respectively**. This is issued in pursuance to 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 (aa), (b), (c), (e) and (t) of sub-section (1) of section 196 of the Code.

Submission of comments

16. Comments may be submitted electronically by 15th July, 2022. For providing comments, please follow the process as under:

- i. Visit IBBI website, www.ibbi.gov.in;
- ii. Select 'Public Comments';
- iii. Select 'Discussion paper – Financial Self-Sufficiency of IBBI'
- 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.And then write comments under the selected option.
- viii. If you have selected 'Specific Comments', please select para/regulation number and then sub-para/sub-regulation number and write comments under the selected para/sub-para or regulation/sub-regulation number.
- ix. You can make comments on more than one para/sub-para, by clicking on **More Comments** and repeating the process outlined above from point 16 (vi) onwards.
- x. Click 'Submit' if you have no more comments to make.

THE GAZETTE OF INDIA
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New Delhi, Thursday, ---- JULY, 2022

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

NOTIFICATION

New Delhi, the ---- July, 2022

Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2022

No. IBBI/2022-23/GN/REG---- In exercise of the powers conferred by sections 196, 207 and 208 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 (Insolvency Professionals) Regulations, 2016, namely: -

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2022.

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

2. In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter referred to as 'the principal regulations'), in regulation 6, in sub-regulation (1), for the words "ten", the words "twenty" shall be substituted.

3. In the principal regulations, in regulation 7, in sub-regulation (2), for clause (ca), the following clause shall be substituted, namely:-

"(ca) pay to the Board, a fee calculated at the rate of 2 percent of:-

- (i) the professional fee earned for the services rendered by him as an insolvency professional in the preceding financial year;
- (ii) the fee paid to professionals appointed by him for the processes undertaken during preceding financial year;

on or before the 30th of April every year, along with a statement in Form E of the Second Schedule;"

4. In the principal regulations, in regulation 12, in sub-regulation (2), for the words "fifty thousand", the words "two lakh" shall be substituted.

5. In the principal regulations, in regulation 13, in sub-regulation (2), in clause (ca), for the words "0.25", the words "2" shall be substituted.

RAVI MITAL, Chairperson
[ADVT.- _____]

Note: The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 were published *vide* notification No. IBBI/2016-17/GN/REG003 dated 23rd November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 424 on 23rd November, 2016 and were last

amended by the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2022 published *vide* notification No. IBBI/2022-23/GN/REG0-- dated -- July, 2022 in the Gazette of India, Extraordinary, Part III, Section 4, No. --- on --- July, 2022.

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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

NOTIFICATION

New Delhi, the ... July, 2022

Insolvency and Bankruptcy Board of India (Information Utilities) (Second Amendment) Regulations, 2022

No. IBBI/2022-23/GN/REG/___— In exercise of the powers conferred by sections 196, 210 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 (Information Utilities) Regulations, 2017, namely:-

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Information Utilities) (Second Amendment) Regulations, 2022.
(2) These Regulations shall come into force on the date of their publication in the Official Gazette.
2. In the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, (hereinafter referred to as ‘the principal regulations’), in regulation 4,
 - a) in sub-regulation (1), for the words “five”, the words “ten” shall be substituted.
 - b) in sub-regulation (2), for the words “five”, the words “ten” shall be substituted.
3. In the principal regulations, in regulation 6, in sub-regulation (2),
 - a) in clause (d), for the words “fifty lakh”, the words “one crore” shall be substituted.
 - b) for clause (e), the following clause shall be substituted, namely:-
“pay to the Board, a fee calculated in the manner stated in the table below within one hundred and eighty days from commencement of respective financial year;

<i>Revenue from Operations (in Rs.) (Reported in the audited financial statements of the preceding financial year)</i>	<i>% of fee on revenue from operations (A)</i>
<i>(A)</i>	<i>(B)</i>
<i>Upto 100 crore</i>	<i>20</i>
<i>More than 100 crore</i>	<i>10</i>

Provided that without prejudice to any other action which the Board may take as it deems fit, any delay in payment of fee by an information utility shall attract simple interest at the rate of twelve percent per annum until paid.

Illustration

Rates		Scenario-I	Scenario-II
*Revenue from Operations (in Rs.)	Fee on Revenue from Operations (in %)	Rs.120 crore	Rs.90 crore
<i>Upto Rs.100 crore</i>	20	Rs.20 crore	Rs.18 crore
<i>Beyond Rs.100 crore</i>	10	Rs. 2 crore	-
Fee payable to Board		Rs.22 crore	Rs.18 crore

**as reported in the audited financial statements of the preceding financial year.”*

RAVI MITAL, Chairperson
[ADVT.- _____]

Note: The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 were published *vide* notification No. IBBI/2016-17/GN/REG009 dated 31st March, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 129 on 31st March, 2017 and were last amended by the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2022 published *vide* notification No. IBBI/2022-23/GN/REG085, dated the 14th June, 2022 in the Gazette of India, Extraordinary, Part III, Section 4, No. 303 on 14th June, 2022.

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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

NOTIFICATION

New Delhi, the ... July, 2022

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022

No. IBBI/2022-23/GN/REG---.- In exercise of the powers conferred by clause (e) of sub-section (13) of section 5, and clause (a) and (f) of sub-section (2) of section 30, and clauses (aa) and (t) of sub-section (1) of section 196 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 (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely: -

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022.
(2) They shall come into force on the date of publication in the Official Gazette.
2. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), in regulation 31, after clause (e), the following clause shall be inserted, namely:-
“(f) regulation fee payable to the Board, under clause (d) of sub-regulation (2) of regulation 38.”
3. In the principal regulations, in regulation 38, in sub-regulation (2), after clause (c), the following clause shall be inserted, namely:-
“(d) payment of regulation fee to the Board, calculated at the rate of 0.25 per cent on the aggregate amounts or its equivalent provided in the resolution plan, where such amount is more than the liquidation value.”
4. In the principal regulations, in regulation 39, the following sub-regulation (4) shall be substituted, namely:-
“The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B, and provision for payment of regulation fee to the Board as required under clause (d) of sub-regulation (2) of regulation 38.”
5. In the principal regulations, in regulation 39, after sub-regulation (5A) the following sub-regulation shall be inserted, namely:-

“(5B) The resolution professional shall, within fifteen days of the order of the Adjudicating Authority approving a resolution plan, remit to the Board, the regulation fee as required under clause (d) of sub-regulation (2) of regulation 38.

Provided that this sub-regulation shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022.”

6. In the principal regulations, in the Schedule, in Form H, after Paragraph (7), the following Paragraph shall be inserted, namely:-

“7A. The regulation fee to the Board, calculated at the rate of 0.25 per cent on the aggregate amounts or its equivalent provided in the resolution plan, where such amount is more than the liquidation value as covered at Paragraph (7) above is as under-

[Amounts in Rupees]

Aggregate amounts or its equivalent provided in the resolution plan, where such amount is more than the liquidation value. and as covered at Paragraph (7)	Amount of regulation fee payable to the Board calculated at the rate of 0.25 per cent on the aggregate amounts or its equivalent provided in the resolution plan, where such amount is more than the liquidation value.
...	...

RAVI MITAL, Chairperson
[ADVT. - _____]

Note: The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 were published vide notification No. IBBI/2016-17/GN/REG004, dated 30th November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 432 on 30th November, 2016 and were last amended by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022 published vide notification No. IBBI/2021-22/GN/REG084, dated the 14th June, 2022 in the Gazette of India, Extraordinary, Part III, Section 4, No. 302 on 14th June, 2022.

**Insolvency and Bankruptcy Board of India
(Press Release)**

**No. IBBI/PR/2022/--
---July, 2022**

Revision of fees applicable for Limited Insolvency Examination and Valuation Examinations.

The Insolvency and Bankruptcy Board of India, in exercise of the powers conferred under the provisions of section 196(1)(a) of the Insolvency and Bankruptcy Board Code to register insolvency professionals and as an 'Authority' under the Companies (Registered Valuers and Valuation) Rules, 2017 to register valuer professionals, has been conducting Limited Insolvency Examination from 31st December, 2016 and Valuation Examinations from 31st March, 2018, respectively.

A fee of Rs. 1,500 + applicable GST, i.e., Rs. 1,770 is currently being charged for each of these examinations. It has been decided that the fee applicable for each enrolment on or after 1st August 2022 will be Rs. 5,000 + applicable GST, i.e., Rs. 5,900 for the Limited Insolvency Examination or Valuation Examinations.
