

Discussion Paper on MSME Registration and Disclosure Framework under CIRP

1. Proposal on MSME Registration and Disclosure Framework under CIRP

1.1 Background

Micro, small and medium enterprises (MSMEs) play a vital role in the Indian economy, contributing significantly to employment generation and gross domestic product. Given their importance, the Insolvency and Bankruptcy Code, 2016 (Code) provides certain special dispensations for MSMEs undergoing insolvency resolution. Specifically, Section 240A of the Code exempts resolution applicants for MSMEs from the disqualification criteria in clauses (c) and (h) of Section 29A. Moreover, under the Code pre-packaged insolvency resolution process (PPIRP) can be initiated only for an MSME.

1.2 Current Regulatory Framework

Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) specifies the contents of the Information Memorandum (IM) to be prepared by the resolution professional. The IM serves as a comprehensive document providing key information about the corporate debtor to prospective resolution applicants. While Regulation 36 mandates certain details to be included in the IM, it does not currently require disclosure of the status of corporate debtor's in terms of being MSME or not.

1.3 Issue

The MSME status of a corporate debtor has important implications for the insolvency resolution process, particularly in terms of the eligibility criteria for resolution applicants under Section 240A. However, this crucial information is not currently required to be explicitly disclosed in the IM. There have been instances where the classification of a corporate debtor as an MSME has been contested during the insolvency resolution process. This uncertainty can lead to complications and potential delays in the resolution process. There is a need to provide greater clarity in this respect.

It is pertinent to mention that Reserve Bank of India [Lending to Micro, Small & Medium Enterprises (MSME) Sector] Directions, 2017, mandate the enterprises to register online on the Udyam Registration portal and obtain 'Udyam Registration Certificate'. The Master Directions also mandate that for Priority Sector Lending purposes, banks shall be guided by the classification recorded in the Udyam Registration Certificate.

1.4 Proposal

It is proposed to amend Regulation 36 of the CIRP Regulations for making disclosures about the status of the corporate debtor, being registered or not, as a micro, small or medium enterprise in accordance with the provisions of the Micro, Small and Medium Enterprises Development Act, 2006.

Furthermore, in case, available documents with the RP, indicates CD falls within the category of MSME, in that event, he may get the Udyam Registration Certificate generated, on case-to-case basis before making such disclosure in the IM.

The proposed amendment is expected to reduce information asymmetry in the resolution process for MSMEs. It may encourage greater participation from potential resolution applicants who may have otherwise been uncertain about their eligibility. Certain resolution applicants specifically look for MSMEs due to their unique nature and advantages, such as simplified compliance requirements and government incentives. This may lead to enhanced participation and thereby lead to improved outcomes in terms of value maximization.

1.5 Public comments

The Board accordingly solicits comments on the proposal discussed above and the draft regulations placed in the **Annexure**. After considering the comments, the Board proposes to make regulations under clauses (aa) and (t) of subsection (1) of section 196 of the Code.

1.6 Submission of comments

Comments may be submitted electronically by 12th September, 2024. 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 – Disclosure of MSME Status in the Information Memorandum'
- 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.

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

1.8. You can make comments on more than one para, by clicking on more comments and repeating the process outlined above from point 1.6 (vi) onwards.

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

**GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
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NEW DELHI, xxxxDAY, xxxx xx, 2024**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION
New Delhi, the _____, 2024**

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2024.

No. IBBI/2024-25/GN/REGxxx.— In exercise of the powers conferred by clause (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 to further 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) (Third 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 (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, under clause (2) of regulation 36 after sub-clause (ka), the following shall be inserted, namely: -

(kb) details of the corporate debtor's registration status as a micro, small, or medium enterprise in accordance with the Micro, Small and Medium Enterprises Development Act, 2006, and the notifications issued thereunder, if applicable.

Provided that in case, based on available documents, Corporate Debtor meets criteria for being classified as micro, small, or medium enterprise, the resolution professional may get the Udyam Registration Certificate generated, on case to case basis before disclosing corporate debtor's classification in the information memorandum.

Mr. 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) (Amendment) Regulations, 2024 published *vide* notification No. IBBI/2023-24/GN/REG113, dated the 15th February, 2024 in the Gazette of India, Extraordinary, Part III, Section 4, No. 284 on 15th February, 2024.
