

**Discussion paper on amendments to
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for
Corporate Process) Regulations, 2016**

1st November, 2023

This discussion paper solicits comments on following issues, namely: -

- A. Approval of committee of creditors (CoC) for insolvency resolution process cost;
- B. Monthly CoC meetings;
- C. Discussion of valuation methodology and report with CoC;
- D. Disclosure of valuation reports;
- E. Continuation of process activities pending disposal of extension application by the Adjudicating Authority (AA);
- F. Clarity in minimum entitlement to dissenting financial creditors; and
- G. Mandatory contents of resolution plan.

A. Approval of CoC for insolvency resolution process cost

1. In the matter of *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors*, the Hon'ble Supreme Court vide judgement dated 15th November, 2019 held that it is the commercial wisdom of the CoC to decide as to whether to rehabilitate or liquidate the corporate debtor (CD). The CoC, comprising all the financial creditors of the insolvent entity, becomes the pivotal decision-making body once the corporate insolvency resolution process (CIRP) commences and determines as to how and in what manner the CIRP is to take place.

2. Maintaining a CD as a 'going concern' during the CIRP is crucial for preserving its intrinsic value, ensuring its operational continuity, and securing better returns for the creditors. The Insolvency and Bankruptcy Code, 2016 (Code) acknowledges the cost incurred by resolution professional (RP) to keep the business of the CD as a going concern and provides that this going concern cost shall be part of the insolvency resolution process cost. Regulation 34 of the IBBI (Insolvency Resolution Process for Corporate Process) Regulations, 2016 (CIRP Regulations) states that "*The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.*" Thus, it is clear that RP is mandated to take approval of the CoC for all the expenditure incurred by the RP including to run the CD as a going concern. To streamline the process and improve the monitoring of the CoC on the CIRP process, it is considered necessary to explicitly provide that RP has to take approval of CoC for all the insolvency resolution process cost incurred by the RP including costs incurred in running the business of the CD as a going concern.

3. Proposal: It is proposed the insolvency professional (IP) should seek approval of all components of the insolvency resolution process cost, including the expenditure incurred for ongoing operations of the CD.

4. Proposed amendment: The following may be inserted below regulation 31A of CIRP Regulations:

“31B. Approval for insolvency resolution process cost

The insolvency professional shall place before the committee, the operational status of the corporate debtor and shall seek approval for all the expenses including the expenditure incurred in running the business of the corporate debtor as a going concern, which are part of insolvency resolution process cost from the committee.”

B. Monthly CoC meetings

1. The CIRP is conceived to be a swift and time-efficient mechanism, ideally designed to be accomplished within 180 days. This time frame has been instituted to ensure timely resolution, minimizing disruptions and potential value degradation. Observations from some ongoing CIRP cases highlight substantial gaps in the scheduling meetings of CoC. In some instances, there has been a gap of more than six months between two successive CoC meetings. Such significant gaps conflict with the intended agility of the process. CoC meetings are crucial venues for collective decision-making, leading to the resolution of the CD. Prolonged gaps between meetings result in delayed decisions, stalling the momentum of the resolution process. Additionally, this could erode the trust and confidence of stakeholders in the efficacy of the CIRP framework.

2. It seems that the frequency of CoC meetings largely depends on the presence of approval items on the agenda. When there are no such items, CoC meetings tend to be deferred or delayed. This ad-hoc scheduling might be overlooking the larger intent of the CIRP, which emphasizes consistent monitoring and speedy resolution.

3. Establishing a monthly mandate for conducting CoC meetings ensures consistent check-ins, prompt feedback, and a platform for addressing any emerging concerns. Regular meetings also foster a collaborative spirit among stakeholders.

4. **Proposal:** To review the work/progress of the CIRP by CoC, RP be mandated to conduct the meetings of CoC every month.

5. **Proposed Regulation:** Regulation 18(1) of CIRP Regulations shall be amended as follows:

“(1) A resolution professional may convene a meeting of the committee as and when he considers necessary and not more than thirty days should elapse between the date of one meeting and that of the next meeting.”

C. Discussion of valuation methodology and report with CoC

1. The current CIRP Regulations specify that the valuation report be disseminated to the CoC only after the reception of resolution plans. Consequently, until this juncture, the CoC possesses a restricted understanding of pivotal valuations, namely the Fair Value and Liquidation Value. The unavailability of this information constrains the CoC's decisions regarding the eligibility criteria for PRA's and the evaluation matrix, basing them on limited information. Further, after such disclosure, disputes are raised by some CoC members regarding the methodology employed for valuation. The probability of such disputes could be reduced if the valuers engage in proactive discussions concerning their valuation methodology with the CoC prior to finalizing their valuation reports.

2. **Proposal:** It is proposed that before finalisation of valuation report, valuers shall explain the valuation methodology to the members of the committee in a meeting facilitated by the RP.

3. **Proposed amendment:** Sub-regulation (1)(a) of Regulation 35 of CIRP Regulations shall be amended as follows:

“(1) Fair value and liquidation value shall be determined in the following manner:-

(a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;

Provided that the registered valuer shall explain the valuation methodology to members of the committee in a meeting facilitated by the resolution professional before computation of estimates.”

D. Disclosure of fair value in the Information Memorandum

1. CIRP is guided by principles of transparency, maximization of value, and fair treatment of all stakeholders involved. One of the pillars of this process is the valuation of the CD, which is used to inform the CoC about the underlying value of the company, aiding in the decision-making process. Currently, valuation reports are only disseminated to the members of CoC.

2. Since the information on fair value is primarily available only with the IP, CoC and valuers, it creates an information asymmetry. It dissuades resolution applicants to participate who fear that some other resolution applicants may have better information on value. This transparency ensures that all resolution applicants operate with the same set of information, fostering trust and encouraging participation. So, a proposal for disclosure of fair value is deemed to attract more serious bidders and may result in better value. The biggest advantage of disclosure of fair value is that resolution applicants can gain better insights into the CD's worth, facilitating more accurate and competitive bid formulations. Having access to fair value can streamline their due diligence process, ultimately leading to more viable and better valued resolution plans.

3. Proposal: Given the advantages associated with the disclosure of fair value with resolution applicant, it is proposed that fair value should be made part of Information Memorandum.

4. Proposed amendment: The following shall be added after clause (1) of sub-regulation (2) of regulation 36 of CIRP Regulations as follows:

“(m) fair value.”

E. Continuation of process activities pending disposal of extension application by the AA

1. Section 12(2) of the Code provides for the RP to file an application to the AA to extend the period of the CIRP beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent. of the voting shares.

2. Section 12(3) of the Code confers the powers to the AA for passing the order for extension of the CIRP pursuant to the application filed by RP.

3. Regulation 40 of the CIRP Regulations provides as under:

(1) The committee may instruct the resolution professional to make an application to the Adjudicating Authority under section 12 to extend the insolvency resolution process period.

(2) The resolution professional shall, on receiving an instruction from the committee under this Regulation, make an application to the Adjudicating Authority for such extension.

4. However, there are situations when a RP has filed application seeking the extension of the CIRP before the AA, but the order has not yet been received, and the process gets stranded for the lack of clarity in the interim period. Such situations can create several challenges and issues in the ongoing CIRP during the interim period. It is the duty of the RP to keep the business running, and ensuring the continuity of the debtor company's operations during the interim period is in alignment with the objectives of the Code.

5. **Proposal:** In order to bring clarity on the continuation of the process when the application filed with the AA is pending for the extension orders and to enable the RP to fulfil his responsibilities, an amendment to regulation 40 of the CIRP Regulations is proposed.

6. **Proposed amendment:** The following clarification is proposed to be issued in the regulation 40 of the CIRP Regulations as under:

“Clarification: It is clarified that the resolution professional shall continue to discharge his responsibilities under the corporate insolvency resolution process, for the period when the application seeking extension of the corporate insolvency resolution process is filed by the resolution professional till the application for extension is decided by the Adjudicating Authority.”

F. Clarity in minimum entitlement to dissenting financial creditors:

1. The minimum entitlement of the dissenting financial creditors is stated in Section 30(2)(b) which states that: *‘and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, **which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.**’*

2. Further, regulation 38(1) of the CIRP Regulations, 2016 states the following:

‘38. Mandatory contents of the resolution plan.

(1) The amount payable under a resolution plan –

a.

b. *to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.’*

3. So, there are safeguards and minimum value protections that are available to dissenting financial creditors. It offers a minimum entitlement to financial creditors who did not vote in favour of the resolution plan an amount which cannot be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the CD. Also, regulation 38 of CIRP Regulations states that the financial creditors who did not vote in favour of the resolution plan shall be paid in priority.

4. This poses a problem because the term ‘realisable amount in the event of liquidation when the resolution plan has been approved’ is not defined under the Code. This value is a estimated figure since the prevailing scenario is one of resolution rather than liquidation. It is to be noted that CIRP Regulations define the term ‘liquidation value’ under regulation 2(1)(k) as under:

“liquidation value” means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on **the insolvency commencement date.**’

5. The "liquidation value" as described in the CIRP Regulations represents a notional amount, determined at the start of the insolvency proceedings. Therefore, realisable amount in the event of liquidation would be invariably lesser than the value arrived using liquidation value as there would be loss of value during the CIRP.

6. Thus, in a case where the assets of the CD depreciate during CIRP, dissenting financial creditors gets higher entitlement than due. It may extend to a situation where the resolution value is lesser than the liquidation value, which is dated, and the financial creditors would be nudged towards dissenting against a resolution plan as it may be economically more lucrative. What this in turn does is incentivizing liquidation which goes against the basic objective of the Code of resolution. The major issue with such decision making is that if a large number of financial creditors dissent to a resolution plan seeking higher entitlement it may push the CD towards liquidation ultimately defeating the objective of the Code, and also against the interest of such dissenting creditors, as their entitlement then is determined by actual realization after liquidation. The issue is also explained in the Table below where under CIRP there is a resolution plan to be voted upon by the CoC:

Choice of financial creditor				
Assent/Dissent	Assent to a resolution plan		Dissent to a resolution plan	
Scenario	I	II	III	IV
Outcome	Resolution	Liquidation	Resolution	Liquidation
Entitlement/Realisation	As per the terms of resolution plan The entitlement is an active choice of the terms of the resolution plan.	Liquidation proceeds distributed after realization and deducting liquidation costs	Based on liquidation value as on insolvency commencement date	Liquidation proceeds distributed after realization and deducting liquidation costs

7. Thus, in scenarios II and IV where the CD is headed towards liquidation, the entitlement of the financial creditors remains the same, however, under scenario III where the CD is going towards resolution, the entitlement of dissenting financial creditors is to be determined by the notional liquidation value arrived at as on the insolvency commencement date.

8. Thus, there is a need for aligning the incentives of the stakeholders to the actual value remaining of the CD and to the objectives of the Code.

9. Similarly, stakeholders have expressed difficulty in determining the extent of what ‘payment in priority’ in terms of regulation 38 of CIRP Regulations. It is proposed to issue a clarification to this effect.

10. Proposal: In view of the foregoing discussion, the following is proposed:

1. To provide clarity with regard to entitlement of dissenting financial creditors, which shall be lower of the:

- (i) amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53; or
 - (ii) the liquidation value as defined under these regulations been distributed in accordance with the order of priority in sub-section (1) of section 53.
2. Further, regulation 38(1) may be amended to provide that the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid ‘amount due in the event of liquidation’ in priority over financial creditors who voted in favour of the plan.
 3. Further, an illustration may be added to clarify the extent of priority.

11. Proposed amendment:

- 1) The following definition of ‘amount due in the event of liquidation’ may be added under the CIRP Regulations by insertion under regulation 2(1)(k):

“(ka) “amount due in the event of liquidation” shall mean lower of the (i) amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53; or (ii) the liquidation value as defined under these regulations been distributed in accordance with the order of priority in sub-section (1) of section 53.”

- 2) Regulation 38(1)(b) shall be substituted as under:

*“(1) The amount payable under a resolution plan –
 ...
 (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid amount due in the event of liquidation in priority over financial creditors who voted in favour of the plan.*

Clarification: It is clarified that at no stage of implementation of resolution plan financial creditors who voted in favour of the resolution plan shall be paid higher percent of its dues, than the financial creditors who did not vote in favour of the resolution plan.

Illustration: If a creditor a dissented on a plan, he shall receive at least as much percent of its due amount as to be received by any assenting creditor at any stage. Here a plan has three phases. The dissenting creditor must be paid as below to meet the requirement of priority in payment.

<i>Phases</i>	<i>Assent (Voted in Favour)</i>	<i>Dissent (Did Not Vote in Favour)</i>
<i>1</i>	<i>50% of entitlements in plan</i>	<i>50%=> (Greater than or equal to 50%) of entitlements in plan</i>
<i>2</i>	<i>Further 30% of entitlements in plan</i>	<i>80%=> (Greater than or equal to 80%) of entitlements in plan</i>
<i>3</i>	<i>Further 20% of entitlements in plan</i>	<i>100% of entitlements in plan</i>

”

G. Mandatory contents of resolution plan

1. Regulation 38 of CIRP Regulations currently deal with the provisions pertaining to mandatory contents of a resolution plan. It lists out various details that must be incorporated in a resolution relating to amount payable, statement dealing with interest of stakeholders, details of resolution applicant, term of plan, provisions for implementation, manner of proceedings in respect of avoidance transactions etc. Apart from the same, the regulation stipulates that a plan must demonstrate feasibility and viability, addressing the cause of default, effective implementation, capacity of resolution applicant etc.

2. However, in its span of six years since operation of the Code, it has been seen that there is severe litigation w.r.t. the amount of distribution of proceeds of the resolution plan to the stakeholders. Because of the same, the resolution plan does not get approved and so the effective implementation of resolution plan and takeover by resolution applicant gets hampered and the entire CIR process gets derailed.

3. **Proposal:** To streamline the resolutions and prevent delay in the implementation of the resolution plan, it is proposed that the resolution plan may be structured in two parts. Part A of the resolution plan shall deal with the inflow i.e., payment under the resolution plan (total value of the resolution plan), payment of insolvency resolution process cost, payment schedule, feasibility and viability of the resolution plan etc. while Part B will deal with distribution to the various stakeholders.

4. Structuring the resolution plan in two parts will enable AA to first approve the resolution plan effectuating control by the resolution applicant so that inflow can take place and CD may start functioning again. The second part shall deal distribution amongst the various stakeholders. In case of any dispute or litigation. The disputed amount may be kept in an escrow account and be distributed after the litigation in respect of distribution attains finality. Thus, it is proposed that the resolution plan be prepared in two parts:

5. **Part A** of the resolution plan shall deal with the following:

- a. selection of resolution applicant
- b. background, terms, implementation
- c. feasibility and viability
- d. approvals required
- e. means of finance
- f. amount to be paid for insolvency resolution process costs
- g. total proceeds by resolution applicant (in other words- total realisable value)
- h. Means for implementation including escrow arrangement in case required in view of approval of Part-B.

Part B of the resolution plan shall deal with payments to be made to each category of creditor and other stakeholders against their admitted claims.

6. Proposed amendment: Regulation 38 of CIRP Regulations shall be replaced by the following:

“38. Mandatory contents of the resolution plan.

A resolution plan shall be prepared in the following two parts:

(1) Part A of the resolution plan shall include the following:

- a. the total realisable value being provided under the resolution plan;*
- b. the payments to be made for insolvency resolution process costs;*
- c. the term of the plan and its implementation schedule;*
- d. the management and control of the business of the corporate debtor during its term;*
- e. the detailed overview and experience of the resolution applicant;*
- f. the sources of fund and its utilisation;*
- g. a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past;*
- h. adequate means for supervising its implementation including provision for deposit in an escrow account, if any, of the amount for which there is dispute about the amount to be paid to a creditor or stakeholder out of the amounts provided in clauses (b) and (c) of sub-section (1) of this regulation;*
- i. provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed;*
- j. a resolution plan shall demonstrate that –*
 - (1) it addresses the cause of default;*
 - (2) it is feasible and viable;*
 - (3) it has provisions for its effective implementation;*
 - (4) it has provisions for approvals required and the timeline for the same; and*
 - (5) the resolution applicant has the capability to implement the resolution plan.”*

(2) Part B of the resolution plan shall provide the following:

- (a) a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor;*
- (b) the payments to be made to each category of creditor and other stakeholders against their admitted claims;*
- (c) the amount payable to the operational creditors shall be paid in priority over financial creditors; and*
- (d) the amount payable to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.*

Provided that the committee shall recommend whether a resolution plan prepared in terms of clauses (1) and (2) shall have provisions for separate approval of Part A and Part B by the Adjudicating Authority.”

H. Public comments: The Board accordingly solicits comments on the proposals 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.

I. Submission of comments: Comments may be submitted electronically by 22nd November, 2023. 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 – CIRP November 2023’
- 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.

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

K. You can make comments on more than one para, by clicking on more comments and repeating the process outlined above from point 17 (vi) onwards.

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

**GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, xxxxDAY, xxxx xx, 2023**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION
New Delhi, the _____, 2023**

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2023.

No. IBBI/2023-24/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 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, 2023.
(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 (hereinafter referred to as ‘the principal regulations’), after regulation 2(1)(k), the following shall be inserted, namely: -

(ka) “amount due in the event of liquidation” shall mean lower of the (i) amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53; or (ii) the liquidation value as defined under these regulations been distributed in accordance with the order of priority in sub-section (1) of section 53.

3. In regulation 18 of the principal regulations, sub-regulation (1) shall be substituted as under, namely: -

(1) A resolution professional may convene a meeting of the committee as and when he considers necessary and not more than thirty days should elapse between the date of one meeting and that of the next meeting.

4. The following shall be inserted after regulation 31A in the principal regulations namely: -

31B. Approval for insolvency resolution process costs.

The insolvency professional shall place before the committee, the operational status of the corporate debtor and shall seek approval for all the expenses, which are part of insolvency resolution process cost in each meeting of the committee.

5. The following proviso shall be added under regulation 35 in the principal regulations namely: -

(1) Fair value and liquidation value shall be determined in the following manner:-

(a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;

Provided that the registered valuer shall explain the valuation methodology to members of the committee in a meeting facilitated by the resolution professional before computation of estimates.

6. The following shall be added under after clause (l) of sub-regulation (2) of regulation 36 in the principal regulations namely: -

(m) fair value.

7. The following shall be substituted in place of regulation 38 of the principal regulations namely: -

38. Mandatory contents of the resolution plan.

A resolution plan shall be prepared in the following two parts:

(1) Part A of the resolution plan shall include the following:

- (a) the total realisable value being provided under the resolution plan;*
- (b) the payments to be made for insolvency resolution process costs;*
- (c) the term of the plan and its implementation schedule;*
- (d) the management and control of the business of the corporate debtor during its term;*
- (e) the detailed overview and experience of the resolution applicant;*
- (f) the sources of fund and its utilisation;*
- (g) a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past;*
- (h) adequate means for supervising its implementation including provision for deposit in an escrow account, if any, of the amount for which there is dispute about the amount to be paid to a creditor or stakeholder out of the amounts provided in clauses (b) and (c) of sub-section (1) of this regulation;*
- (i) provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed;*
- (j) a resolution plan shall demonstrate that –*
 - (1) it addresses the cause of default;*
 - (2) it is feasible and viable;*
 - (3) it has provisions for its effective implementation;*
 - (4) it has provisions for approvals required and the timeline for the same; and*
 - (5) the resolution applicant has the capability to implement the resolution plan.”*

(2) Part B of the resolution plan shall provide the following:

(a) a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor;

(b) the payments to be made to each category of creditor and other stakeholders against their admitted claims;

(c) the amount payable to the operational creditors shall be paid in priority over financial creditors; and

(d) the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid amount due in the event of liquidation in priority over financial creditors who voted in favour of the plan.

Clarification: It is clarified that at no stage of implementation of resolution plan financial creditors who voted in favour of the resolution plan shall be paid higher percent of its dues, than the financial creditors who did not vote in favour of the resolution plan.

Illustration: If a creditor a dissented on a plan, he shall receive at least as much percent of its due amount as to be received by any assenting creditor at any stage. Here a plan has three phases. The dissenting creditor must be paid as below to meet the requirement of priority in payment.

Phases	Assent (Voted in Favour)	Dissent (Did Not Vote in Favour)
1	50% of entitlements in plan	50%=> (Greater than or equal to 50%) of entitlements in plan
2	Further 30% of entitlements in plan	80%=> (Greater than or equal to 80%) of entitlements in plan
3	Further 20% of entitlements in plan	100% of entitlements in plan

Provided that the committee shall recommend whether a resolution plan prepared in terms of clauses (1) and (2) shall have provisions for separate approval of Part A and Part B by the Adjudicating Authority.

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, 2023 published vide notification No. IBBI/2023-24/GN/REG102, dated the 20th July, 2023 in the Gazette of India, Extraordinary, Part III, Section 4, No. 506 on 20th July, 2023.
