

Insolvency and Bankruptcy Board of India

Date: 26th April, 2019

Invitation of Public Comments: Bankruptcy Process for Personal Guarantors to Corporate Debtors along with Draft Regulations

The Insolvency and Bankruptcy Code, 2016 (Code) envisages reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all stakeholders. In the two years since the enactment of the Code, the provisions relating to corporate insolvency resolution, including fast track resolution, corporate liquidation and voluntary liquidation of corporate debtors (CDs) have been operationalised.

2. The CD often has guarantors. For comprehensive corporate insolvency resolution and liquidation, it is necessary that insolvency of the CD as well as its guarantors are considered together to the extent possible. Section 128 of the Indian Contract Act, 1872 enables a creditor to pursue remedy against both the principal borrower and the guarantor, as liability of a guarantor is co-extensive with that of the principal borrower, unless the contract provides otherwise. Thus, if the principal borrower defaults in repayment of debt to a creditor, the creditor may choose to pursue remedy against the guarantor for repayment of debt. In effect, insolvency proceedings of a CD and its guarantors are closely linked to each other.

3. Sub-section (2) of section 60 of the Code, was amended by the Insolvency and Bankruptcy (Second Amendment) Act, 2018, to provide that where a corporate insolvency resolution process (CIRP) or liquidation proceeding of a CD is pending before a National Company Law Tribunal (NCLT), an application for insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such CD shall be filed before the NCLT. Sub-section (3), as amended by the said Amendment Act provides that an insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of a CD pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such CD.

4. In the matter of *Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation Ltd.*, the National Company Law Appellate Tribunal (NCLAT), vide order dated 8th January, 2019, held that it is not necessary to initiate CIRP against the principal borrower before initiating CIRP against the corporate guarantors. Without initiating any CIRP against the principal borrower, it is always open to the financial creditor to initiate CIRP under section 7 against the corporate guarantors, as the creditor is also the financial creditor qua corporate guarantor. The Supreme Court, vide its order dated 11th February, 2019, upheld the aforesaid order of the NCLAT on appeal.

5. Guarantors could be individuals (personal guarantors to CDs) or corporates (corporate guarantors to CDs). The mechanism for insolvency resolution of corporate guarantor, being CDs, is already in place. Resolution of insolvency of personal guarantors complements corporate insolvency regime, particularly when there is high incidence of applications being filed in respect of preferential, fraudulent, undervalued and extortionate transactions. It also puts personal guarantors and corporate guarantors at the same level playing field. Absence of

a regime for resolution of insolvency of personal guarantors distorts the choice of borrowers and lenders.

6. It is, however, important to note that personal guarantors are individuals. The insolvency resolution process under the Code provides certain minimum protection to them. Resolution of both corporate insolvency and individual insolvency have certain common objectives, such as increasing the supply of credit by increasing lenders' expected returns, discourage creditors from racing to be first to collect when debtor is in financial distress. Resolution of individual insolvency has few other additional objectives, such as, provision of partial consumption insurance for debtors, fresh start which incentivises the debtors to work after filing for bankruptcy. Thus, while operationalising insolvency resolution of personal guarantors, it is necessary to ensure that the individual has the minimum protection available under the law.

7. The Working Group on Individual Insolvency (WG)¹ holds the view that a phased implementation of individual insolvency and bankruptcy is the intention of legislature and a practical necessity and suggested that the provisions of the Code may first be notified for personal guarantors to CDs. The remaining provisions of Part III of the Code applicable to individuals with business and to individuals without business may be notified in subsequent phases. It is necessary to have separate rules and regulations for each of the three classes of individuals (personal guarantors to corporate debtors, partnership and proprietorship firms, and other individuals).

8. Based on recommendations of the WG, followed by public consultation and advice of the Advisory Committee on Individual Insolvency, and keeping in view the amendment to the Code enabling phased implementation of individual insolvency, the Board is working on regulations on insolvency resolution of personal guarantors to CDs.

9. Chapter III of Part III of the Code provides for insolvency resolution process in which the creditors enter into a repayment plan for the repayment of debts of the debtor. It is not a debt recovery process by one creditor, but a collective process where all creditors of a debtor sit across the table to negotiate a plan according to which all debts of the debtor are to be repaid.² However, a failure in the resolution process may result in triggering of bankruptcy process. The next logical steps, therefore, is to notify rules and regulations for bankruptcy of personal guarantors to CDs.

Bankruptcy

10. There is a saying: 'Bankruptcy is a creditor's remedy as well as debtor's right'. This very well summarises that a nation's legal system should have a bankruptcy law framework that is creditor-friendly in the ex-ante sense and debtor friendly in the ex-post sense.³

¹ A Working Group constituted by IBBI to recommend the strategy and approach for implementation of the provisions of the Insolvency and Bankruptcy Code, 2016 dealing with insolvency and bankruptcy in respect of (i) guarantors to corporate debtors i.e. personal guarantors, and (ii) individuals having business, and submit a report along with the draft rules and regulations.

² The Report of the Bankruptcy Law Reforms Committee Report, Volume 1: Rationale and Design, (November 2015), Paragraph 3.2.1.

³ Richard A. Posner, "Corporations, Secured and Unsecured Financing, Bankruptcy", in Economic Analysis of Law, 2011.

11. The Bankruptcy Law Reforms Committee noted the following as the goals of the provisions of Part III of the Code:

- *Providing a fair and orderly process for dealing with the financial affairs of insolvent individuals.*
- *Providing effective relief or release from the financial liabilities and obligations of the insolvent.*
- *Providing mechanisms that enable both debtor and creditor to participate with the least possible delay and expense.*
- *Providing the correct ex-ante incentives so that individuals are not able to unfairly strategise during the process of bankruptcy.*

12. Globally, bankruptcy laws in relation to individuals have been noted to be a contract between the debtor, the creditor and the society.⁴ The key driving concern for a society in a bankruptcy law is ameliorating the negative systemic effects of unregulated distressed debt.⁵ However, bankruptcy laws may also benefit the debtors and creditors involved in the process. For instance, from the debtor's standpoint, bankruptcy relieves the burden of debts and offers the prospect of rehabilitation. On the other hand, for a creditor, bankruptcy is a collection device designed to substitute an orderly collective procedure for a disorderly race in which creditors are free to pursue their claims individually.⁶

13. Additionally, a bankruptcy law occupies a prime position in the economic regulatory landscape of a country due to the sheer magnitude of people it affects. In India, large parts of the credit market consists of loans to individuals, and to small and medium enterprises (SMEs) which may be in the form of sole proprietorships.⁷ As per a report of the International Finance Corporation of the World Bank Group, "*Proprietorship is the most commonly adopted ownership structure (94.5 percent of all MSMEs)*" among SMEs⁸. Therefore, insolvency procedures for most SMEs will be covered by Part III of the Code.

Report of Working Group

14. The bankruptcy process, as provided in Chapters IV and V of Part III of the Code, involves realisation and distribution of the estate of the debtor. On failure of insolvency resolution process, an application for bankruptcy may be made by a creditor individually or jointly with other creditors or by a debtor, in accordance with section 121 of the Code. The WG deliberated on bankruptcy process for personal guarantors to CDs and has submitted its report on the subject, along with draft bankruptcy rules and the draft bankruptcy regulations. While the bankruptcy rules provide the process and forms of applications for initiating bankruptcy proceedings, the regulations provide the details of the bankruptcy procedure.

⁴ Insolvency Law and Practice, '*Report of the Insolvency Law Review Committee*', Cmnd 8558 (1982), paragraph 192.

⁵ The World Bank, '*Report on Treatment of Insolvency of Natural Persons*', (2013), Paragraph 77

⁶ *Ibid*, paragraph 78.

⁷ *The Report of the Bankruptcy Law Reforms Committee Report, Volume 1: Rationale and Design*', (November 2015), paragraph 6.

⁸ The World Bank, IFC Research Study on '*Micro, Small and Medium Enterprise Finance in India, A Research Study on Needs, Gaps and Way Forward*', (November 2012).

15. The WG has made the following recommendations in respect of bankruptcy of personal guarantors to CDs:

- a. The application may be made in the prescribed form by the debtor or the creditor, along with a fee of five thousand rupees. The form may provide the details relating to the contract of guarantee and a disclosure to specify that the application has not been filed in respect of 'excluded debts'.
- b. Unlike CIRP, past auditors or accountants may not be disqualified from being appointed as a bankruptcy trustee. Such persons may know the accounts of the debtor better and may help build trust with the creditors. For appointment as a bankruptcy trustee, an insolvency professional (IP) must not be an associate of the debtor and should not represent any other stakeholder in the same bankruptcy process. An IP, who is a related party of CD or who has been appointed as a resolution professional or liquidator of such CD, may not be eligible to be a bankruptcy trustee. This disqualification should extend to the partners or directors of the insolvency professional entity in which the IP is a partner or director.
- c. The fee of the bankruptcy trustee may be decided by the committee of creditors (CoC). It may be advisable to allow flexibility in fixing the fee of the bankruptcy trustee instead of mandating a specific rate. A table similar to the one provided in regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations) may be provided in the bankruptcy regulations as well detailing a fee structure. The CoC may choose to rely on this for calculation of fee of the bankruptcy trustee.
- d. The bankruptcy trustee should provide regular reports to the Adjudicating Authority and the CoC. He shall provide:
 - i. a preliminary report within 90 days of the bankruptcy commencement date;
 - ii. a first progress report within 180 days of the bankruptcy commencement date;
 - iii. a second progress report within 270 days of the bankruptcy commencement date;
 - iv. subsequent progress reports within ten days from the end of every quarter, as may be required; and
 - v. a final report as provided in section 137 of the Code.
- e. The WG noted that the CoC comprises only financial creditors in CIRP. In the UK, a CoC in bankruptcy has a minimum of 3 and maximum of 5 creditors. The WG felt that it may not be advisable for the rules or regulations to put a cap on the number of creditors in the CoC, though it may not be efficient to have meetings and voting by all creditors in complex cases with multiple creditors. The WG suggested that the MCA may consider amending the Code to put a cap on the number of creditors in the CoC, if the need is felt, based on some experience after the provisions of Part III of the Code are notified.
- f. Section 135(4) of the Code provides that the voting share of creditors shall be determined by the bankruptcy trustee, as per the regulations. Section 24(6) of the Code provides that, in CIRP, the voting share of creditors in the CoC is determined based on the debt owed to them by the CD. The WG favoured the CIRP approach, that is, voting share based on the debt owed and recommended that the bankruptcy regulations may

provide that the creditors shall have a voting share based on the amount of debt owed to them by the debtor.

- g. Section 172 of the Code allows the secured creditors to step outside the bankruptcy process and realise their security outside. However, they may choose to surrender their security to the bankruptcy trustee for general benefit of creditors too. The WG suggested that the bankruptcy regulations should provide that the voting share of secured creditors shall only be for the unsecured part of their debt, if any, if they realise their security outside the bankruptcy process. A similar provision exists in the Code in sections 110, in relation to IRP.
- h. The WG recommends that, in order to reflect the threshold given in CIRP in section 21(8), threshold for approval of various decisions by creditors during bankruptcy may be fixed at fifty-one percent of their voting share. However, this may only apply to those decisions for which an approval threshold has not been provided in the Code.
- i. The WG recommends that the threshold value for personal ornaments in section 79(14)(c) of the Code may be fixed at five lakh rupees.
- j. The WG noted that the purpose of section 79(14)(e) of the Code is to exempt a dwelling unit used as a consumption asset, necessary for the sustenance of the debtor and his family. Prescription of a uniform or single value for a dwelling unit may not be appropriate. Various factors may affect the value of a house which should be exempted, such as number of family members of the debtor, the area in which the house is, etc. The WG has, therefore, proposed an all-encompassing formula which considers the size of the debtor's family, minimum area required for each family member and the circle rate of the area.
- k. On the lines of regulation 33 of the Liquidation Regulations, it has been recommended that assets in the estate shall be sold through auction. However, private sale may be permitted if- (i) the asset is perishable, (ii) value of asset is likely to deteriorate if the sale is delayed; or (iii) the selling price of the asset is higher than the reserve price of a failed auction. Further, a schedule, similar to Schedule I to the Liquidation Regulations, may be provided in the bankruptcy regulations providing details of the manner of sale.
- l. The WG contemplated sale of the bankrupt's assets through auctions and private sale. It suggested that permission of the AA shall be taken by the bankruptcy trustee before any private sale of any immovable property of the bankrupt is made to the following persons: (i) a creditor of the bankrupt (ii) a professional appointed by the bankruptcy trustee (iii) an associate of the bankrupt (iv) the bankruptcy trustee or (v) any company where the bankrupt or any of her creditors is a promoter. Further, if any private sale of movable property above Rs.10 lakh is made to such persons, then prior permission should be taken from the AA.
- m. The WG recommended that the bankruptcy trustee shall not proceed with a sale and shall submit a report to the AA for appropriate orders, if he believes that there is any collusion amongst one or more of the following persons: (i) the buyers (ii) the bankrupt (iii) the creditors (iv) associates of the bankrupt (v) corporate debtor for whom the

bankrupt has given a personal guarantee or (vi) any related parties of such corporate debtor.

16. While on the recommendations of the WG, the Ministry of Corporate Affairs will be making the rules, the IBBI will be framing regulations for bankruptcy process for personal guarantors to corporate debtors. This is issued in pursuance to regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. The Board accordingly solicits comments on the following by **17th May, 2019**:

- a. the specific para in this discussion paper
- b. the specific regulations in the draft Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, placed at **Annexure - A**.

17. Comments may be submitted electronically by **17th May, 2019**. For providing comments, please follow the process as under:

- (i) Visit IBBI website, www.ibbi.gov.in.
- (ii) Select 'Public Comments' and then Select 'Discussion Paper'.
- (iii) Provide your Name, and Email ID.
- (iv) 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.
- (v) Select the kind of comments you wish to make, namely, -
 - a) General Comments; or
 - b) Specific Comments.
- (vi) 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 Code;
 - d) Inconsistency, if any, between the provisions in the regulations with those in any other law;
 - e) Any difficulty in implementation of any of the provisions in the regulations;
 - f) Any provision that should have been provided in the regulations, but has not been provided; or

- g) Any provision that has been provided in the regulations, but should not have been provided.

And then, write comments under the selected option.

- (vii) 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.
- (viii) You can make comments on more than one para/sub-para, or regulation / sub-regulation number, by clicking on more comments and repeating the process outlined above from point 17 (v) onwards.
- (ix) Click 'Submit', if you have no more comments to make.

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (BANKRUPTCY
PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS)
REGULATIONS, 2019**

IBBI/2019-20/GN/[●]. - In exercise of the powers conferred under clause (t) of sub-section (1) of section 196, and clauses (zr) and (zs) of sub-section (1) of section 240 read with clause (e) of section 2 and sub-section (2) and (3) of section 60 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following Regulations, namely -

PRELIMINARY

1. Short title and commencement.

- (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
- (2) These regulations shall come into force on [●] 2019.
- (3) These regulations shall apply to the bankruptcy process for personal guarantors to corporate debtors under Part III of the Code.

2. Definitions.

In these regulations, unless the context otherwise requires-

- (a) “bankrupt” means a debtor within the meaning of clause (a) of sub-section (3) of section 79;
- (b) “bankruptcy process period” means the period beginning from the bankruptcy commencement date until the date of completion of administration of the estate as per section 137 or until date of discharge order under section 138, whichever is earlier;
- (c) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
- (d) “committee” means the committee of creditors constituted by the bankruptcy trustee as defined in sub-section (11) of section 79;
- (e) “debtor” means a personal guarantor to a corporate debtor which is undergoing a corporate insolvency resolution or liquidation process under Part II of the Code;
- (f) “electronic form” shall have the meaning assigned to it in clause (r) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (g) “electronic means” mean an authorized and secured computer programme which is capable of producing confirmation of sending communication to the

member entitled to receive such communication at the last electronic mail address provided by such member and keeping record of such communication;

- (h) “form” means a form appended to these regulations;
- (i) “registered valuer” means a person registered as such in accordance with the Companies Act, 2013 (18 of 2013) and rules made thereunder;
- (j) “related party of the corporate debtor” shall have the meaning assigned to it in sub-section (24) of section 5;
- (k) “section” means a section of the Code;
- (l) words and expressions used and not defined in these regulations, but defined in the Code, shall have the meaning assigned to them in the Code.

BANKRUPTCY TRUSTEE

3. Eligibility of bankruptcy trustee.

- (1) An insolvency professional shall be eligible to be appointed as a bankruptcy trustee for a bankruptcy process if he, and all partners and directors of the insolvency professional entity of which he is a partner or director,
 - (a) are independent of the bankrupt, and if the insolvency professional entity of which he is a partner or director is independent of the bankrupt.
 - (b) are not subject to any ongoing disciplinary proceedings by the Board or to a restraint order issued by the Board.
- (2) A person shall be considered independent of the bankrupt in sub-regulation (1), if he:
 - (i) is not an associate of the debtor;
 - (ii) is not a related party of the corporate debtor for whom the bankrupt has given a personal guarantee;
 - (iii) has not been appointed as an interim resolution professional or resolution professional or liquidator in respect of a corporate debtor for whom the bankrupt is a personal guarantor;
 - (iv) does not represent any other stakeholders in the same bankruptcy process.
- (3) Where an insolvency professional is to be appointed as a bankruptcy trustee, and the application under section 122 or 123 does not propose the name of such insolvency professional to act as bankruptcy trustee, he shall provide written consent to the Adjudicating Authority under Form A.

4. Fees of bankruptcy trustee.

- (1) The bankruptcy trustee shall be entitled to a fee as decided by the committee, including fee paid upfront to the bankruptcy trustee if any.
- (2) The committee may rely on the table given in Schedule I to calculate the fee of the bankruptcy trustee, in sub-regulation (1), based on amount realized and distributed from realization of the bankrupt's estate.
- (3) The fee payable to the bankruptcy trustee shall form part of the bankruptcy process cost.

5. Registers and books of bankrupt.

- (1) Where the books of account of the bankrupt are incomplete on the bankruptcy commencement date, the bankruptcy trustee shall get them completed and brought up-to-date within ninety days of the bankruptcy commencement date.
- (2) The bankruptcy trustee shall maintain a cash book, and such other ledgers, registers and books, as may be required to account for the administration of the estate in the bankruptcy process, and shall preserve them for a period of eight years after the completion of administration of the estate.
- (3) Where the bankruptcy trustee is authorised to carry on the business of the bankrupt, he shall keep separate books of account in respect of such business and such books shall, as far as possible, be in conformity with the books already kept by the bankrupt in the course of its business.
- (4) The bankruptcy trustee shall keep receipts for all payments made or expenses incurred by him in relation to the bankruptcy process.

6. Reporting requirements.

- (1) The bankruptcy trustee shall prepare and submit the following reports to the Adjudicating Authority and the committee in the manner specified under these regulations -
 - (a) a preliminary report;
 - (b) progress reports;
 - (c) a final report.
- (2) The bankruptcy trustee shall preserve a physical or an electronic copy of the reports referred to in sub-regulation (1) for eight years after the completion of the administration of the estate.

7. Preliminary report.

- (1) The bankruptcy trustee shall submit a preliminary report to the Adjudicating Authority and the committee within ninety days of the bankruptcy commencement date.

- (2) The bankruptcy trustee shall send a copy of the preliminary report to the bankrupt at the time of submission of the report under sub-regulation (1).
- (3) The preliminary report referred to in sub-regulation (1) should include the following details-
- (a) A list of the assets and liabilities of the bankrupt as on the bankruptcy commencement date based on the available reliable data and records;
 - (b) The proposed plan of action in relation to administration of the estate, including the timeline in which it is proposed to be carried out and the estimated costs;
 - (c) Any further inquiry to be made in respect of the assets, business or affairs of the debtor;
 - (d) Details of the assets which are intended to be realised, including the following-
 - (i) Value of the assets, valued either in accordance with regulation 35 or as per valuation undertaken during insolvency resolution process of the bankrupt;
 - (ii) Method of realisation of the assets;
 - (iii) Reasons for choice of the method under (ii);
 - (iv) Expected amount from realisation;
 - (v) Any other information that may be relevant for the realisation of the assets.
 - (e) Details of the assets which do not form part of the bankrupt's estate, reasons for the same, and the proposed plan of action in respect of such assets, if any.
- (4) The preliminary report shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it on specified terms and conditions.

8. Early completion of administration.

At the time of the preparation of the preliminary report or any time after, if the bankruptcy trustee is of the opinion that –

- (a) the realisable assets of the bankrupt are insufficient to cover the costs of bankruptcy process, and
- (b) the affairs of the bankrupt do not require further investigation,

he may prepare a report under section 137 and present it to the committee for its approval.

9. Progress Reports.

- (1) The bankruptcy trustee shall submit progress reports to the Adjudicating Authority and committee in accordance with the following schedule-
 - (a) The first progress report within one hundred and eighty days of the bankruptcy commencement date;
 - (b) The second progress report within two hundred and seventy days of the bankruptcy commencement date;
 - (c) subsequent progress reports within ten days from the end of every quarter, as may be required.
- (2) The bankruptcy trustee shall also send a copy of the progress report to the bankrupt at the time of submission of the report under sub-regulation (1).
- (3) The progress report prepared under sub-regulation (1) shall include-
 - (a) A statement indicating the progress in the bankruptcy process including:
 - (i) Settlement of list of creditors;
 - (ii) Distribution of dividend made to the creditors, including interim dividend;
 - (iii) A significant change in the expected realisation for any asset and basis for such change;
 - (iv) A significant change in the value of assets or liabilities of the bankrupt, with reasons for such change;
 - (v) Distribution of unsold property made to the creditors;
 - (vi) Details of any property that remains to be realised;
 - (vii) Any other relevant information.
 - (b) An asset sale report containing the following details of the assets realised including-
 - (i) realised value;
 - (ii) cost of realisation;
 - (iii) manner and mode of realisation, including details as per Schedule II;
 - (iv) reasons for any reduction in the realisable value compared to the value mentioned in the preliminary report;
 - (v) person in favour of whom the property has been realized.

- (c) Details of fee and remuneration due to and received by the bankruptcy trustee along with a description of the activities carried out by him;
 - (d) Details of the fee and remuneration paid to professionals appointed by the bankruptcy trustee along with a description of activities carried out by them;
 - (e) Other expenses incurred by the bankruptcy trustee in relation to the bankruptcy process;
 - (f) Developments in relation to any material litigation by or against the bankrupt;
 - (g) Filing of and developments in relation to disclaimer of certain properties, or avoidance of transactions under chapter V of Part III of the code;
 - (h) Accounts maintained by the bankruptcy trustee showing the receipts and payments made during the period of the report, as well as cumulative receipts and payments made since the bankruptcy commencement date; and
 - (i) Any other relevant aspect of the bankruptcy process.
- (4) The progress report prepared by the bankruptcy trustee closest to the end of the financial year shall enclose audited accounts of the bankruptcy trustee's receipts and payments for the financial year, if auditing of such accounts would have been mandated by section 44AB of the Income Tax Act, 1961 (43 of 1961) for the bankrupt.
- (5) The progress reports shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it on specified terms and conditions.

10. Final Report.

- (1) The final report prepared by the bankruptcy trustee under section 137 shall contain an account of the completion of the administration and distribution of the bankruptcy estate, including the following -
- (a) manner of realisation of the assets of the bankrupt;
 - (b) manner of distribution of the dividends amongst the creditors;
 - (c) details regarding the discharge of the bankrupt, if applicable;
 - (d) unclaimed dividend, if any;
 - (e) surplus dividend, if any; and
 - (f) if the bankruptcy process cost exceeds the estimated cost provided in the preliminary report, along with reasons for the same.
- (2) In the event the application for discharge is filed under clause (a) of sub-section (1) of section 138, the bankruptcy trustee shall file a final report with the Adjudicating

Authority under section 137, within fifteen days of the approval of the report by the committee.

- (3) In the event the application for discharge is filed under clause (b) of sub-section (1) of section 138, the final report shall be a part of such application.

11. Appointment of professionals.

- (1) A bankruptcy trustee may appoint accountants, legal or other professionals, as may be necessary, to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the bankruptcy process cost.
- (2) The bankruptcy trustee shall not appoint a professional under sub-regulation (1) who:
- (a) is a relative of the bankruptcy trustee;
 - (b) is an associate of the bankrupt;
 - (c) is a related party of the corporate debtor for whom the bankrupt has given a personal guarantee; or
 - (d) has been appointed as an interim resolution professional or a resolution professional or a liquidator in respect of the corporate debtor for whom the bankrupt has given a personal guarantee.
- (3) A professional appointed or proposed to be appointed under sub-regulation (1) shall disclose the existence of any pecuniary or personal relationship with any of the creditors, the bankruptcy trustee, the corporate debtor for whom the bankrupt has given a personal guarantee or the concerned bankrupt within three days after he becomes aware of it, to the bankruptcy trustee.

12. Persons to extend cooperation.

- (1) The following persons shall extend all assistance and cooperation to the bankruptcy trustee to complete the bankruptcy process:
- (a) The bankrupt;
 - (b) Creditors of the bankrupt;
 - (c) Employees and workmen of the bankrupt, if any;
 - (d) Partners of the bankrupt, if any;
 - (e) Auditors of the bankrupt, if any; and
 - (f) Any other professional appointed by the bankruptcy trustee under regulation 11, if any.

- (2) The bankruptcy trustee shall document and maintain the particulars of any consultation with the persons mentioned in sub-regulation (1).
- (3) The bankruptcy trustee may make an application to the Adjudicating Authority for a direction that a person, who-
 - (a) is covered under sub-regulation (1);
 - (b) was the resolution professional or the previous bankruptcy trustee of the bankrupt;
 - (c) has possession of any of the properties of the bankrupt;
 - (d) has been appointed as an interim resolution professional or a resolution professional or a liquidator in respect of the corporate debtor for whom the bankrupt has given a personal guarantee; or
 - (e) any other person deemed necessary,shall cooperate with him in the collection of information or any other action necessary for the conduct of the bankruptcy process.
- (4) An application may be made under sub-regulation (3) only after the bankruptcy trustee has made reasonable efforts to obtain the information or cooperation from such person and failed to obtain it.

CLAIMS

13. Debt payable at future time.

- (1) A person may prove for a claim whose payment was not yet due on the bankruptcy commencement date and is entitled to distribution in the same manner as any other creditor.
- (2) Subject to any contract to the contrary, where a creditor has proved for a claim under sub-regulation (1), and the debt has not fallen due before distribution, he is entitled to the principal amount and the interest that has become due till the bankruptcy commencement date along with the outstanding principal amount owed.

14. Negotiable instruments.

Where a person seeks to prove a debt under a bill of exchange, promissory note or other negotiable instrument or security of a like nature, such bill of exchange, note, instrument or security, as the case may be, or its certified true copy shall accompany the proof of claim.

15. Periodical Payments.

In the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the bankruptcy commencement date.

16. Determination of quantum of claim.

Where the amount claimed by a claimant is not precise due to any reason, the bankruptcy trustee shall make the best estimate of the amount of the claim based on the information available with him.

17. Debt in foreign currency.

The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the bankruptcy commencement date.

Explanation- “The official exchange rate” is the reference rate published by the Reserve Bank of India or derived from such reference rates.

18. Notice for proof of debt.

- (1) The bankruptcy trustee shall send a notice to the creditors mentioned in the list prepared under section 132, for submission of the complete proof of debt in respect of their claims.
- (2) The notice under sub-regulation (1) shall be sent within the time mentioned in sub-section (1) of section 171, and the submission by creditors shall be within thirty days from the date of the notice.

19. Verification of claims.

- (1) The bankruptcy trustee shall verify the claims submitted and shall prepare a list of creditors within the time-period specified in section 132, including the following information in respect of each creditor, –
 - (a) the name;
 - (b) the amount of total debt;
 - (c) the amount of debt in default;
 - (d) the amount of debt under (c) that is admitted;
 - (e) the proofs admitted or rejected in part, and the proofs wholly rejected;
 - (f) security interest in respect of the claims, if any.
- (2) The bankruptcy trustee shall certify the constitution of a committee to the Adjudicating Authority within three days post the first meeting of the creditors under regulation 20.
- (3) A revised list of creditors, if required, shall be prepared by the bankruptcy trustee on the basis of the information received under sub-section (1) of section 171, and the committee may be modified, if required.
- (4) The list of creditors, and any modification to the committee, mentioned in sub-regulation (3) shall be filed with the Adjudicating Authority within fifteen days from the last date for receipt of proofs of debt, and simultaneously, the remaining members of the committee shall be intimated.

- (5) The inclusion of a creditor under sub-regulation (3) shall not affect the validity of any decision taken in any meeting of the committee prior to such inclusion.
- (6) The revised list of creditors, as modified from time to time and filed with the Adjudicating Authority, shall be –
 - (a) available for inspection by the persons who submitted claims with proof;
 - (b) available for inspection by partners and guarantors of the bankrupt;
 - (c) displayed on the website, if any, of the bankrupt.

MEETINGS OF COMMITTEE

20. First meeting of the creditors.

- (1) The notice under sub-section (1) of section 133 calling the first meeting of the creditors shall be served on the creditor at the address it has provided to the bankruptcy trustee by hand or registered post or courier or speed post but in any event, be served by electronic means in accordance with regulation 22.
- (2) A notice under this regulation shall comply with the requirements under regulation 23.

21. Meetings of the committee.

- (1) A bankruptcy trustee may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting on a request by not less than thirty-three percent in value of creditors.
- (2) A meeting of the committee, other than the meeting mentioned in regulation 20, shall be called by giving notice to every member in such period as decided by the committee, provided that such notice shall not be given less than forty-eight hours prior to the meeting.
- (3) The notice under sub-regulation (2) shall be served on the members at the address they have provided to the bankruptcy trustee, by hand or registered post or courier or speed post but in any event, be served by electronic means in accordance with regulation 22.
- (4) Any resolution or decision of the committee under the code shall require approval of more than fifty percent in value of the creditors.
- (5) A notice under this regulation shall comply with the requirements under regulation 23.

22. Service of notice by electronic means.

- (1) A notice by electronic means may be sent to the members through e-mail, as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

- (2) The subject line in the e-mail shall state the name of the bankrupt, the place, the time and the date on which the meeting is scheduled.
- (3) If notice is sent in the form of a non-editable attachment to an e-mail, such attachment shall be in the Portable Document Format or in a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.
- (4) When notice or notifications of availability of notice are sent by an e-mail, the bankruptcy trustee shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained as “proof of sending”.
- (5) The obligation of the bankruptcy trustee shall be satisfied when he transmits the e-mail and he shall not be held responsible for a failure in transmission beyond his control.
- (6) The notice made available on the electronic link or Uniform Resource Locator shall be readable, and the recipient should be able to obtain and retain copies, and the bankruptcy trustee shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.

23. Contents of the notice for a meeting.

- (1) The notice shall inform the members of the venue, time, date and agenda of the meeting.
- (2) The notice of the meeting shall provide that a creditor may attend and vote in the meeting either in person or through a proxy in accordance with regulation 30.
- (3) If an option to participate through electronic voting is made available to the creditors, the notice of the meeting shall –
 - (a) state the process and the manner for voting and the time schedule, including the time period during which the votes may be cast:
 - (b) provide the login ID and the details of a facility for generating password and for keeping security and casting of an electronic vote in a secure manner; and
 - (c) provide contact details of the person who will address the queries connected with the voting.

24. Quorum.

- (1) Where a meeting of the committee could not be held for want of quorum, unless the creditors have previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day.

- (2) In the event a meeting of the committee is adjourned in accordance with sub-regulation (1), the adjourned meeting shall be quorate with the creditors attending the meeting.

25. Conduct of meeting.

- (1) The bankruptcy trustee shall act as the chairperson of meetings of the committee.
- (2) At the commencement of a meeting, the bankruptcy trustee shall take a roll call when every creditor, including those attending through proxy, shall state for the record, the following—
 - (a) his name;
 - (b) whether he is attending in the capacity of a proxy;
 - (c) whether he is representing a creditor or group of creditors; and
 - (d) that he has received the agenda and all the relevant material for the meeting.
- (3) After the roll call, the bankruptcy trustee shall inform the creditors of the names of all persons who are present for the meeting and confirm if the required quorum is complete.
- (4) The bankruptcy trustee shall ensure that the required quorum is present throughout the meeting.
- (5) From the commencement of the meeting till its conclusion, no person other than the creditors and any other person whose presence is required by the bankruptcy trustee shall be allowed access to the place where meeting is held without the permission of the bankruptcy trustee.
- (6) The bankruptcy trustee shall ensure that minutes are made in relation to each meeting of the committee and such minutes disclose the particulars of the creditors who attended the meeting by proxy.
- (7) The bankruptcy trustee shall circulate the minutes of the meeting to all creditors in the committee by electronic means within forty-eight hours of the said meeting.

26. Transfer of debt due to creditors.

- (1) In the event a creditor assigns or transfers the debt due to such creditor to any other person during the bankruptcy process period, both parties shall provide the bankruptcy trustee the terms of such assignment or transfer and the identity of the assignee or transferee.
- (2) The bankruptcy trustee shall notify each creditor and the Adjudicating Authority of any resultant change in the committee within two days of such change.

27. Attendance of bankrupt.

- (1) The bankrupt shall attend any meeting which the bankruptcy trustee may, by notice, require him to attend and any adjournment thereof.
- (2) The notice specified in sub-regulation (1) shall be delivered to the bankrupt before the date of the meeting, by hand or registered post or courier or speed post but in any event, be served by electronic means in accordance with regulation 22.
- (3) The notice specified in sub-regulation (1) shall be given to the bankrupt in such time prior to the meeting as is decided for notice to creditors under regulation 21(2).
- (4) The bankruptcy trustee shall circulate the minutes to the bankrupt, along with the creditors, of the meetings attended by the bankrupt as per this regulation.

VOTING BY COMMITTEE

28. Calculation of voting share.

- (1) In the event a creditor has opted to enforce its security interest and participate only in relation to the unsecured part of their debt, their voting share shall be calculated with respect to the unsecured part of the debt.
- (2) The voting share for a creditor who has opted to relinquish its security interest shall be calculated with respect to the amount of debt relinquished.
- (3) The voting share for each creditor shall be calculated by the bankruptcy trustee based on the amount of debt owed to such creditor.
- (4) For the purposes of sub-section (3) of section 135, an unliquidated debt shall mean a debt to which a value cannot be assigned by the bankruptcy trustee.

29. Voting by the committee.

- (1) The bankruptcy trustee shall, at the meeting, take a vote of the members of the committee who are participating in the meeting on any item listed for voting after discussion on the same.
- (2) The bankruptcy trustee may provide each member of the committee the means to exercise its vote either at the meeting or by electronic means or through electronic voting system in accordance with the provisions of this regulation.
- (3) The bankruptcy trustee shall-
 - (a) circulate the minutes of the meeting by electronic means to all participants of the meeting within forty-eight hours of the conclusion of the meeting, which shall include the decision of the creditors on the agenda items along with the names of the creditors who voted for or against the decision, or abstained from voting; and
 - (b) seek a vote on the matters listed for voting in the meeting from the creditors who were not present in the meeting or did not vote at the meeting, by electronic means or through an electronic voting system,

where the voting shall be kept open for a minimum of twenty-four hours from the circulation of the minutes as per sub-regulation 3(a).

- (4) At the end of the voting period, the voting portal shall forthwith be blocked.
- (5) Once a vote on a resolution is cast by a creditor, such creditor shall not be allowed to change it subsequently.
- (6) The circulation of minutes relating to matters under sub-regulation 3(b) to all participants of the meeting, shall be made by electronic means within twenty-four hours of the conclusion of the voting.

Explanation- For the purposes of this regulation-

- (a) the expressions “voting by electronic means” or “electronic voting system” means a “secured system” based process of display of electronic ballots, recording of votes of the members of the creditors and the number of votes polled in favour or against, such that the voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security;*
- (b) the expression “secured system” means computer hardware, software, and procedure that-*
 - (i) are reasonably secure from unauthorized access and misuse;*
 - (ii) provide a reasonable level of reliability and correct operation;*
 - (iii) are reasonably suited to perform the intended functions; and*
 - (iv) adhere to generally accepted security procedures.*

30. Voting by proxy.

- (1) A creditor who is entitled to vote at a meeting of the committee shall be entitled to appoint a person as a proxy to attend and vote on his behalf, who shall not be a creditor or associate of the bankrupt.
- (2) The appointment of a proxy shall be in Form B.
- (3) The form for appointment of proxy shall be completed and delivered by the creditor to the bankruptcy trustee forty-eight hours prior to the meeting of the committee.
- (4) The proxy shall only be entitled to vote on any resolution on behalf of a creditor.

REALISATION OF ASSETS

31. Mode of sale.

- (1) The bankruptcy trustee shall ordinarily sell the assets of the bankrupt through an auction process as specified in Schedule II(a).

- (2) The bankruptcy trustee may sell the assets by private sale, in the manner specified in Schedule II(b) when-
- (a) The asset is perishable in nature.
 - (b) The value of the asset is likely to deteriorate significantly if the sale is delayed;
 - (c) The selling price of the asset is higher than the reserve price of a failed auction.
- (3) The bankruptcy trustee shall not proceed with a sale if he has reason to believe that there is any collusion amongst any one or more of the following:
- (a) the buyers,
 - (b) the bankrupt,
 - (c) the creditors,
 - (d) associates of the bankrupt or creditors,
 - (e) the corporate debtor for whom the bankrupt has given a personal guarantee, or
 - (f) related party of the corporate debtor for whom the bankrupt has given a personal guarantee,

and shall submit a report to the Adjudicating Authority for appropriate orders.

Explanation: For the purposes of this regulation:

The term “associate” will apply mutatis mutandis to the creditor, as under sub-section (2) of section 79.

32. After acquired property.

- (1) If the bankrupt serves a notice in respect of an after acquired property under sub-section (2) of section 150, or otherwise, he shall not dispose of such property without the prior permission of the Adjudicating Authority.
- (2) If the bankrupt disposes of property before giving the notice under sub-section (2) of section 150, he shall within seven days from such disposal, disclose to the bankruptcy trustee the relevant details of the person to whom the property has been transferred, and shall also provide any other information which may be necessary to enable the bankruptcy trustee to trace the property and recover it for the estate.
- (3) Any expenses incurred by the bankruptcy trustee in acquiring title to such after-acquired property shall form part of the bankruptcy process costs.

33. Disclaimer of onerous property.

- (1) The bankruptcy trustee shall notify the bankrupt and the persons interested in the onerous property in respect of the proposed disclaimer, at least seven days prior to serving the notice of disclaimer under sub-section (1) of section 160.
- (2) The notification under sub-regulation (1) shall contain the intention of the bankruptcy trustee to disclaim the property, particulars of the property intended to be disclaimed, and details of the interested persons in such property.
- (3) The notice under sub-section (1) of section 160 shall be filed with the Adjudicating Authority within three days of giving such notice to the persons mentioned therein.
- (4) An application under sub-section (1) of section 163 shall be made within thirty days of the applicant becoming aware of the disclaimer or from the date of the notice of disclaimer under sub-section (1) of section 160, whichever is earlier.

Explanation: For the purposes of section 160, 161 and 162 and this regulation, a person interested in onerous property shall be –

- (a) *Any person who claims an interest in the disclaimed property; or*
- (b) *Any person who is under any liability in respect of the onerous property; or*
- (c) *Where the disclaimed property is a dwelling house, any person who is in occupation of or entitled to occupy the dwelling house, on the date of application for bankruptcy is filed.*

34. Purchase of assets by certain persons.

- (1) Any purchase or acquisition of interest in any asset comprised in the bankruptcy estate, if conditions in sub-regulation (2) are met, may only be made by the following persons with prior permission of the Adjudicating Authority:
 - (a) any creditor of the bankrupt;
 - (b) any professional appointed by the bankruptcy trustee under regulation 11;
 - (c) any associate of the bankrupt;
 - (d) the bankruptcy trustee; or
 - (e) any company where the bankrupt or the creditor is a promoter or a director or partner.
- (2) Permission under sub-regulation (1) shall be obtained if, from the bankruptcy estate,:
 - (a) A movable property valued above 10 lakh rupees is being transferred through private sale;
 - (b) Any immovable property is being transferred through private sale.

- (3) Any realisation made contrary to the provisions of this regulation may be set aside by the Adjudication Authority, and it may make such order as it may deem fit.

Explanation: The term “associate” in this regulation will apply mutatis mutandis to the bankruptcy trustee and creditor, as under sub-section (2) of section 79 of the Code.

35. Valuation of assets.

- (1) The bankruptcy trustee shall appoint a registered valuer to value the assets which may or may not form part of the bankrupt’s estate, when he is of the opinion that it is necessary or when a resolution to that effect has been passed by the committee.
- (2) The provisions of regulation 11 shall apply *mutatis mutandis* to registered valuers appointed under sub-regulation (1).
- (3) The registered valuer appointed under sub-regulation (1) shall submit to the bankruptcy trustee the estimates of the realizable value of the asset(s) computed in accordance with internationally accepted valuation standards, after physical verification of the assets of the bankrupt.
- (4) The bankruptcy trustee may appoint an additional registered valuer for valuing the assets of the bankrupt if required in the circumstances of the case, who shall independently submit his estimate as per sub-regulation (3).
- (5) In the event an additional registered valuer is appointed under sub-regulation (4), the average of the estimates received from both valuers will be considered to be the value of the assets.

36. Realisation of security interest by secured creditor.

- (1) Where a secured creditor realises his security and the amount realised is in excess of the debts due to the secured creditor, such creditor shall tender such surplus funds to the bankruptcy trustee.
- (2) A secured creditor who seeks to realise his security under the bankruptcy process shall intimate the bankruptcy trustee of the price at which he proposes to realise the secured asset.
- (3) The bankruptcy trustee shall attempt to identify a buyer willing to purchase the security at a price higher than the price intimated under sub-regulation (2), and the asset shall then be sold to such buyer, if any, at the higher price by the secured creditor.
- (4) If an asset is sold as per sub-regulation (2), the secured creditor shall realise the asset at the least proposed price and shall bear the cost for identification of the buyer.
- (5) The cost for identification of a buyer under sub-regulation (3) shall be borne by the secured creditor, only in the event such identified buyer purchases the asset of the secured creditor.

PROCEEDS OF BANKRUPTCY PROCESS AND DISTRIBUTION OF PROCEEDS

37. All money to be paid in to bank account.

- (1) The bankruptcy trustee shall open a bank account in the name of the bankrupt followed by the words 'in bankruptcy process', in a scheduled bank, for the receipt of all moneys due to the bankrupt.
- (2) The bankruptcy trustee shall deposit in the bank account opened under sub-regulation (1) all moneys, including cheques and demand drafts received by him as the bankruptcy trustee of the bankrupt, and the realizations of each day shall be deposited into the bank account without any deduction not later than the next working day.
- (3) The bankruptcy trustee may maintain cash of one lakh rupees or such higher amount as may be permitted by the Adjudicating Authority to meet bankruptcy process costs.
- (4) All payments out of the account by the bankruptcy trustee above five thousand rupees shall be made by cheques drawn or online banking transactions against the bank account.

38. Distribution to claimant of deceased creditor.

- (1) In the event an application is made by a claimant or heir of a deceased creditor for receiving dividend payable to such deceased creditor, the bankruptcy trustee shall satisfy himself as to the claimant's right and title to receive the dividend, and may call for evidence regarding such right or title.
- (2) Once the bankruptcy trustee has satisfied himself on the veracity of the claim as per sub-regulation (1), he may apply to the Adjudicating Authority for sanctioning the payment of such dividend or return to the claimant.

39. Distribution.

- (1) Subject to the provisions of section 174 and 178, the bankruptcy trustee shall not commence distribution unless a preliminary report is filed with the Adjudicating Authority.
- (2) The bankruptcy process cost shall be deducted before any dividend distribution is made.

40. Return of money.

A creditor shall forthwith return any monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to.

41. Unclaimed proceeds of bankruptcy or undistributed assets.

- (1) After the approval of the final report but before its filing with the Adjudicating Authority under regulation 10, the bankruptcy trustee shall apply to the Adjudicating Authority for an order to pay into the [Insolvency and Bankruptcy Fund] any unclaimed dividends of bankruptcy process or undistributed asset or any other balance payable to the creditors in his hands.

- (2) Any bankruptcy trustee who retains any money which should have been paid by him into the Insolvency and Bankruptcy Fund under this regulation shall pay interest on the amount retained at the rate of twelve per cent per annum, and also pay such penalty as may be determined by the Board.
- (3) The bankruptcy trustee shall, when making any payment referred to in sub-regulation (1), furnish to the Board, a statement setting forth the following –
 - (a) The names and last known address of the creditors entitled to the unclaimed dividend or undistributed asset or any other balance;
 - (b) The amount of the unclaimed dividend or any other balance for each creditor under (a);
 - (c) The value of the undistributed assets.
- (4) The bankruptcy trustee shall be entitled to a receipt from the Board for any money paid by him under sub-regulation (2), and such receipt shall be an effectual discharge of the bankruptcy trustee in this respect.
- (5) A person claiming to be entitled to any money paid into the Insolvency and Bankruptcy Fund may apply to the Board for an order for payment of the money claimed.
- (6) The Board may, if satisfied that such person under sub-regulation (5) is entitled to the whole or any part of the money claimed, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.
- (7) Any money paid into the Insolvency and Bankruptcy Fund under sub-regulation (1), which remains unclaimed for a period of fifteen years, shall be liable to be utilised for the purposes of the Insolvency and Bankruptcy Fund.

42. Bankruptcy process costs.

- (1) “Bankruptcy process costs” shall mean -
 - (a) the fees payable to any person acting as a bankruptcy trustee;
 - (b) costs mentioned in regulation 5(4), regulation 9(3)(b)(ii), regulation 11(1), regulation 32(3);
 - (c) any costs incurred at the expense of the Government to facilitate the bankruptcy process; and
 - (d) such other costs directly relatable to the bankruptcy process which may be ratified by the committee.
- (2) The committee shall approve all the costs mentioned in sub-regulation (1).

FORM A

WRITTEN CONSENT TO ACT AS BANKRUPTCY TRUSTEE

(Under regulation 3(3) of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)

[Date]

To
The Adjudicating Authority
[Name of Bench]

From
[Name of the Insolvency Professional]
[Registration number of the Insolvency Professional]
[Address of the Insolvency Professional registered with the Board]

Subject: Written consent to act as bankruptcy trustee

1. I, [name], an insolvency professional enrolled with [name of insolvency professional agency] and registered with the Board, note that I have been proposed to be appointed as bankruptcy trustee for the bankruptcy process of [name of the bankrupt].

2. In accordance with Regulation 3(3) of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, I hereby give consent to the proposed appointment.

3. I declare and affirm as under: -

- (a) I am registered with the Board as an insolvency professional.
- (b) I am not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency.
- (c) I do not suffer from any disability to act as a bankruptcy trustee.
- (d) I am eligible to be appointed as bankruptcy trustee of the bankrupt under regulation 3 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 and other applicable provisions of the Code and regulations.
- (e) I shall make the disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;
- (f) I have the following processes in hand:

Sl. No.	Role as	No. of Processes on date of Consent
1.	Interim Resolution Professional	
2.	Resolution Professional of:	

	a. Corporate debtors b. Personal guarantors or individuals or partnership firms	
3.	Liquidator of: a. Liquidation Process b. Voluntary Liquidation Process	
4.	Bankruptcy Trustee	
5.	Authorised Representative	
6.	Any other (please state)	

Date:

Place:

(Signature of Insolvency Professional)
Registration No.....

FORM B
Proxy Form

(Under regulation 30 of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)

Full name of the bankrupt:

[Insert matter name / application number for the bankruptcy process]

Full Name of Creditor				
Address	Present	Permanent	Business	
Identification number	Aadhar Number	PAN	CIN	GSTIN
Email ID				

I being *[insert name of creditor]* holding *[insert voting share]* of the debt of the bankrupt, hereby appoint:

1.	Full name				
	Address	Present	Permanent	Business	
	Identification Number	Aadhar Number	PAN	CIN	GSTIN
	E-mail id				
	Signature				

or failing him;

2.	Full name				
	Address	Present	Permanent	Business	
	Identification Number	Aadhar Number	PAN	CIN	GSTIN
	E-mail id				
	Signature				

as my proxy to attend and vote for me and on my behalf at the meeting of the committee to be held on *[insert date and time of meeting]* at *[insert venue of the meeting]*, and at any adjournment thereof in respect of the matters indicated in the notice of the meeting *[provide details of the notice]*, as listed below:

[insert matters as listed in the agenda]

Signed this *[insert date]* day of *[insert month]* *[insert year]*

Signature of creditor:

Signature of proxy holder(s):

Schedule I

FEEES OF BANKRUPTCY TRUSTEE

[Under regulation 4(2)]

Amount of realisation in rupees (less bankruptcy process cost)	Percentage of fee on the amount realised			
	In the first six months	In the next three months	In the next three months	Thereafter
On the first 50 lakh	10.00	7.50	5.00	3.75
On the next 75 lakh	7.5	5.00	3.75	2.80
On the next 1 crore	5.00	3.75	2.50	1.88
On the next 9 crores	3.75	2.80	1.88	1.41
On the next 40 crores	2.50	1.88	1.25	0.94
On the next 50 crores	1.25	0.94	0.68	0.51
On further sums realised	0.25	0.19	0.13	0.10
Amount of distribution in rupees	Percentage of fee on the amount distributed			
On the first 50 lakh	5.00	3.75	3.00	1.88
On the next 75 lakh	3.75	3.00	1.88	1.41
On the next 1 crore	2.50	1.88	1.25	0.94
On the next 9 crores	1.88	1.40	0.94	0.71
On the next 40 crores	1.25	0.94	0.63	0.47
On the next 50 crores	0.63	0.48	0.34	0.25
On further sums distributed	0.13	0.10	0.06	0.05

SCHEDULE II
MODE OF SALE
[Under regulation 31]

(a) AUCTION

- (1) Where an asset is to be sold through auction, the bankruptcy trustee shall do so in the manner specified herein.
- (2) The bankruptcy trustee shall prepare a marketing strategy in writing for the sale of the asset and may take help of marketing professionals if it is required, which shall be submitted to the Adjudicating Authority under regulation 9 as a part of the progress report.
- (3) The marketing strategy may include-
 - (a) releasing advertisements for auction of the asset;
 - (b) preparing information sheets for the asset;
 - (c) preparing a notice of sale; and
 - (d) liaising with agents.
- (4) The bankruptcy trustee shall prepare terms and conditions of sale, including reserve price, earnest money deposit, pre-bid qualification, and time period for full payment.
- (5) The reserve price shall be the value of the asset arrived at in accordance with regulation 35 and such valuation shall not be more than six months old.
- (6) The bankruptcy trustee shall provide any assistance, if necessary, for the conduct of due diligence by interested buyers.
- (7) The bankruptcy trustee shall sell the assets through an electronic auction on an online portal, or on a portal designated by the Board (if any), where the interested buyers can register, bid and receive confirmation of the acceptance of their bid online.
- (8) The bankruptcy trustee may sell assets through a physical auction, with prior permission of the Adjudicating Authority, if he is of the opinion that it will maximize the realization from the sale of the assets and is in the best interest of the creditors.
- (9) An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders unless the bankruptcy trustee has received permission from the Adjudicating Authority allowing otherwise regarding the visibility of the bid price.

- (10) If required, the bankruptcy trustee may conduct multiple rounds of auctions with a view to maximize the realization from the sale of assets, and to promote the best interests of the creditors.
- (11) On the close of the auction, the payment schedule shall be communicated to the highest bidder. On payment of the full amount, the bankruptcy trustee shall execute the sale and the asset will be transferred in the manner specified in the terms of the sale.

(b) PRIVATE SALE

- (1) Where an asset is to be sold through private sale, the bankruptcy trustee shall conduct the sale in the manner specified herein.
- (2) The bankruptcy trustee shall prepare a strategy in writing to approach interested buyers for assets to be sold by private sale, which shall be submitted to the Adjudicating Authority under regulation 9 as a part of the progress report.
- (3) Private sale may be conducted through directly liaising with potential buyers or their agents, through retail shops, or through any other means that is likely to maximize the realizations from the sale of assets.
- (4) The completion of sale, and the delivery of the assets shall be as per the terms of sale.