

INSOLVENCY AND BANKRUPTCY CODE

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Amendment in IBC Regulation on 30th September 2021

IBBI has made amendments in Corporate Insolvency Resolution Process Regulation (CIRP) and Liquidation Process Regulation on 30th September 2021.

In a recent judgement of Apex Court on 13th September 2021 in Ebix Singapore case, Hon'ble Supreme Court directed adjudicating authority to dispose of the application for resolution plan at a faster speed and to adhere to maximum 330 days' timeline for CIRP. IBBI analysed the reasons for delay in CIRP and the present amendment is towards achieving the goal of conclusion of CIRP in 330 days. Now IBBI has amended regulation 36A(4A) by which only once modification in EOI is allowed. Therefore, Issue of EOI is restricted to twice in the entire CIRP period.

The Request for Resolution Plan (RFRP) is the base document for invitation of Resolution Plan. After issue of RFRP, there appears to be many criteria's which need modification based on market requirement and Resolution Professional (RP) changes the RFRP following the decision in CoC meeting. Now the restriction is imposed in making changes in RFRP and only once the RFRP can be changed by inserting proviso to regulation 36B(5). Minimum of 30 days are required to be given to resolution applicant after any modification in RFRP.

Resolution Plan submitted by applicants are modified number of times and it delays the whole process, now regulation 39(1A) is modified and Resolution Plan can be changed only once. This is a bit challenging as Resolution Plan changes provide maximisation of value of company. However, a separate clause is inserted by which Swiss challenge method is allowed. Under Swiss Challenge Method, one plan is considered as Base Plan and all bidders are asked to bid considering the base plan. In case any bidder is making bid higher than base plan, the applicant for base plan is provided chance to match the higher bid and the best bid is allowed as successful.

Restrictions imposed on CoC by which CoC is not authorised to allow any resolution plan after the time allowed as per EOI. No new resolution applicant is allowed to submit Resolution Plan if his name is not included in prospective applicant list by RP. RP cannot allow any resolution plan which is not in accordance with sec 30(2).

IBBI also amended Liquidation process and restricted liquidator accepting non-refundable deposit for taking part in auction and earnest money deposit cannot exceed 10 percent of reserve price. Liquidator need to explain the reason for rejecting the auction of highest bid in the progress report.