

The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017

UNION OF INDIA

India

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Rule

THE-INSOLVENCY-AND-BANKRUPTCY-BOARD-OF-INDIA-INSPECTION of 2017

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The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 Published vide Notification No. IBBI/2017-18/GN/REG011, dated 12.6.2017 No.

IBBI/2017-18/GN/REG011. - In exercise of the powers conferred under sections 196, 217, 218, 219, 220 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, namely-Chapter - I Preliminary

1. Short title, commencement and application.

(1) These regulations may be called the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017. (2) These regulations shall come into force on the date of their publication in the Official Gazette. (3) These regulations shall apply to inspection and investigation of service providers.

2. Definitions.

(1) In these regulations, unless the context otherwise requires - (a) "associated person" means a proprietor, partner, director, officer, or an employee of a service provider, a professional or a valuer engaged by a service provider or any other person acting for or on behalf of a service provider under inspection or investigation; (b) "Code" means the Insolvency and Bankruptcy Code, 2016 (31 of 2016); (c) "Disciplinary Committee" means a committee of whole time member(s) constituted by the Board under sub-section (1) of section 220 of the Code: Provided that the whole time member(s) in

the Disciplinary Committee shall not be associated with the investigation or inspection;(d)"electronic form" shall have the same meaning as assigned to it in clause (r) of section 2 of the Information Technology Act, 2000 (21 of 2000);(e)"Investigating Authority" means an officer or a team of officers of the Board, which has been directed by the Board, to conduct the investigation of a service provider;(f)"Inspecting Authority" means an officer or a team of officers of the Board, which has been directed by the Board, to conduct the inspection of a service provider;(g)"notice" means a service provider or an associated person who is alleged to have contravened any provision of the Code, or the rules, regulations or guidelines made thereunder;(h)"record" means the books of accounts, registers, documents, call records and other records, whether maintained in electronic form or otherwise, of a service provider and its associated person;(i)"section" means section of the Code; and(j)"service provider" means insolvency professional agency, insolvency professional, insolvency professional entity or information utility.(2)The words and expressions used and not defined in these regulations, but defined in the Code, shall have the same meaning assigned to them in the Code.

Chapter II

Inspection

3. Inspection by the Board.

(1)The Board shall conduct inspection of such number of service providers every year, as may be decided by the Board from time to time.(2)Without prejudice to provisions of sub-regulation (1), the Board may conduct inspection of a service provider under section 218.(3)The Board may, for the purposes of this regulation, by an order, direct an Inspecting Authority to conduct an inspection of records of a service provider for purposes specified under sub-regulation (4).(4)The purposes under sub-regulation (3) include -(a)to ensure that the records are being maintained by a service provider in the manner required under the relevant regulations;(b)to ascertain whether adequate internal control systems, procedures and safeguards have been established and are being followed by a service provider to fulfill its obligations under the relevant regulations;(c)to ascertain whether any circumstance exists which would render a service provider unfit or ineligible;(d)to ascertain whether the provisions of the Code, or the rules, regulations and guidelines made thereunder and the directions issued by the Board, if any, are being complied with;(e)to inquire into the complaints received from clients or any other person on any matter having a bearing on the activities of a service provider; and(f)such other purpose as may be deemed fit by the Board in furtherance of the objectives of the Code.(5)The order referred to in sub-regulation (3) shall contain-(a)scope of inspection;(b)composition of Inspecting Authority;(c)timelines for conducting the inspection;(d)reporting of progress in inspection;(e)submission of interim inspection report, if any; and(f)submission of inspection report.(6)The Board and the Inspecting Authority shall make every effort to keep the inspection confidential and to cause the least burden on, or disruption to, the business of the service provider under inspection.

4. Conduct of Inspection.

(1)The Inspecting Authority shall serve a notice of inspection to the service provider at least 10 days before the commencement of inspection:Provided that where the Inspecting Authority is satisfied that the notice will cause undue delay in inspection or there is an apprehension that records of the service provider may be destroyed, mutilated, altered, falsified or secreted, after the notice is served, it may, for reasons to be recorded in writing, dispense with such notice.(2)The Inspecting Authority may require the service provider or an associated person to submit records, as may be required, before the commencement of inspection.(3)The Inspecting Authority may visit the offices of the service provider for conducting the on-site inspection.(4)It shall be the duty of the service provider and an associated person to produce before the Inspecting Authority such records in his custody or control and furnish to the Inspecting Authority such statements and information relating to its activities within such time as the Inspecting Authority may require.(5)The service provider shall allow the Inspecting Authority to have access to the premises occupied by such service provider or by any other person on its behalf and extend facility for examination of any records in the possession of the service provider or any such other person and provide copies of records or other material which in the opinion of the Inspecting Authority are relevant for the inspection.(6)The Inspecting Authority shall, in the course of inspection, may examine and record statements of any associated person of the service provider in relation to the affairs of his business.(7)It shall be the duty of the service provider and an associated person to give to the Inspecting Authority all assistance which the Inspecting Authority may reasonably require in connection with the inspection.

5. Interim Inspection Report.

(1)The Inspecting Authority may submit an interim inspection report to the Board, if it considers appropriate, keeping in view the nature and progress of inspection.(2)The Inspecting Authority shall submit an interim inspection report, if required by the Board.(3)If the Board is satisfied from the interim inspection report that there is a gross violation of the provisions of the Code, or the rules, regulations made thereunder, by the service provider and an immediate action under subsection (2) of section 220 is warranted, the Board shall refer the matter to the Disciplinary Committee for an appropriate action.(4)On consideration of the interim inspection report, the Disciplinary Committee may pass an interim order with appropriate directions to the service provider.(5)The interim order referred to sub-regulation (4) shall lapse on expiry of 90 days.

6. Inspection Report.

(1)The Inspecting Authority shall send a copy of the draft inspection report to the service provider requiring comments of the service provider within 15 days from receipt of the draft inspection report.(2)The Inspecting Authority shall submit a copy of the draft inspection report to the Board.(3)The Board shall examine the draft inspection report as to whether inspection is complete and satisfactory or requires further inspection and advise the Inspecting Authority accordingly within 15 days of receipt of draft inspection report.(4)After considering the comments of the service provider and taking into account advice of the Board, the Inspecting Authority shall prepare the inspection report and submit it to the Board.

Chapter III

Investigation

7. Investigation by the Board.

(1)The Board may conduct investigation of a service provider under section 218.(2)The Board may, for the purposes of this regulation, by an order, direct an Investigating Authority to conduct an investigation of the affairs of the service provider and to report thereon to the Board.(3)The order referred to in sub-regulation (2) shall contain the following particulars: -(a)scope of investigation in terms of records, activities, places, and persons;(b)composition of Investigating Authority;(c)timelines for conducting investigation;(d)reporting of progress in investigation;(e)submission of interim investigation report, if any; and(f)submission of investigation report.(4)The Board and the Investigating Authority shall make every effort to keep investigation confidential and to cause the least burden on, or disruption to, the business of the service provider under investigation.(5)The Board may, at any time, modify the order referred to under sub-regulation (2) to enlarge the scope of investigation or other terms of investigation, for reasons to be recorded in writing.

8. Conduct of Investigation.

(1)The Investigating Authority shall serve a notice of investigation to the service provider at least 10 days before the commencement of investigation:Provided that where the Investigating Authority is satisfied that the notice will cause undue delay in investigation or there is an apprehension that records of the service provider may be destroyed, mutilated, altered, falsified or secreted, after the notice is served, it may, for reasons to be recorded in writing, dispense with such notice.(2)The Investigating Authority may require the service provider or an associated person to submit records as may be required, before the commencement of investigation.(3)The Investigating Authority may visit the offices of the service provider for conducting the on-site investigation.(4)It shall be the duty of the service provider and an associated person to produce before the Investigating Authority such records in his custody or control and furnish to the Investigating Authority such statements and information relating to its activities within such time as the Investigating Authority may require.(5)The service provider shall allow the Investigating Authority to have access to the premises occupied by such service provider or by any other person on its behalf and extend facility for examination of any records in the possession of the service provider or any such other person and provide copies of records or other material which in the opinion of the Investigating Authority are relevant for the investigation.(6)The Investigating Authority shall, in the course of investigation, may examine and record statements of any associated person of the service provider in relation to the affairs of his business and for that purpose may require any of those persons to appear before it personally.(7)Notes of any examination referred to in sub-regulation (6) shall be recorded and shall be read over to, or by, and signed by, the person examined.(8)It shall be the duty of the service provider and an associated person to give to the Investigating Authority all assistance which the Investigating Authority may reasonably require in connection with the investigation.(9)The Investigating Authority may keep in its custody any record produced to it up to six months and

thereafter shall return the same to the person by whom or on whose behalf the records were produced: Provided that it may call for these records again if it considers necessary and shall give certified copies of these to the person by whom or on whose behalf these were produced, if required by him. (10) Where in the course of investigation, the Investigating Authority has reasonable grounds to believe that the records of, or relating to, a service provider or an associated person in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the competent court having jurisdiction for an order for the seizure of such records. (11) After considering the application under sub-regulation (10) and hearing the Investigating Authority, if necessary, the competent court may, by order, authorise the Investigating Authority - (a) to enter, with such assistance, as may be required, the place or places where such records are kept; (b) to search that place or those places in the manner specified in the order; and (c) to seize records, if it considers necessary, for the purposes of the investigation. (12) The Investigating Authority may requisition the services of any police officer or any officer of the Central Government, or of both to assist him in search and seizure under the order under sub-regulation (11) and it shall be the duty of every such officer to comply with such requisition. (13) Every search or seizure shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

9. Interim Investigation Report.

(1) The Investigating Authority may submit an interim investigation report to the Board, if it considers appropriate, keeping in view the nature and progress of investigation. (2) The Investigating Authority shall submit an interim investigation report, if required by the Board. (3) If the Board is satisfied from the interim investigation report that prima facie, there is a gross violation of the provisions of the Code, or the rules or regulations made thereunder, by the service provider and an immediate action under sub-section (2) of section 220 is warranted, the Board shall refer the matter to the Disciplinary Committee for an appropriate action. (4) On consideration of the interim investigation report, the Disciplinary Committee may pass an interim order with appropriate directions to the service provider. (5) The interim order referred to sub-regulation (4) shall lapse on expiry of 90 days.

10. Investigation Report.

(1) The Investigating Authority shall submit a copy of the draft investigation report to the Board. (2) The Board shall examine the draft investigation report as to whether investigation is complete and satisfactory or requires further investigation and advise the Investigating Authority accordingly within 15 days of receipt of the draft investigation report. (3) After taking into account advice of the Board, the Investigating Authority shall prepare the investigation report and submit it to the Board.

Chapter IV

Consideration of Report

11. Consideration of Report.

(1)The Board shall consider the inspection report received under regulation 6 or investigation report received under regulation 10, as the case may be, expeditiously.(2)If the Board, after consideration of the report under sub-regulation (1), is of the prima facie opinion that sufficient cause exists to take actions under section 220 or sub-section (2) of section 236, it shall issue a show cause notice in accordance with regulation 12 to the service provider or an associated person and in any other case, close the inspection or investigation, as the case may be.

12. Show-cause notice.

(1)The show-cause notice shall be in writing and shall state-(a)the provisions of the Code under which it has been issued;(b)the details of the alleged facts;(c)the details of the evidence in support of the alleged facts;(d)the provisions of the Code, or the rules, regulations or guidelines made thereunder, allegedly violated;(e)the actions or directions that the Board proposes to take or issue, if the allegations are established; and(f)the time within which the notice may make written submission.(2)For the purposes of clause (e) of sub-regulation (1), the Board shall take into account, but not limited to, the following factors: -(a)the nature and seriousness of the alleged contraventions, including whether it was deliberate, reckless or negligent on the part of the notice;(b)the consequences and impact of the alleged contravention, including -(i)unfair advantage gained by the notice as a result of the alleged contravention;(ii)loss caused, or likely to be caused, to clients or any other person as a result of the alleged contravention; and(iii)the conduct of the notice after the occurrence of the alleged contravention, and prior to the alleged contraventions.(3)The show-cause notice shall provide at least 21 days to the notice to make a written submission.(4)The show-cause notice shall state, if a notice fails to respond under sub-regulation (3) within the given time, it shall be disposed of based on the material available on record.(5)The show-cause notice shall enclose copies of relevant documents and extracts of relevant portions from the report of investigation or inspection, or other records.(6)A show-cause notice issued shall be served on the notice-(a)by sending it to the notice at its registered office, by registered post with acknowledgement due; and(b)by an appropriate electronic form to the email address provided by the service provider to the Board.(7)The Board shall refer the show-cause notice to the Disciplinary Committee along-with all the relevant records including the written submissions, if any, made by the notice in the matter.

13. Disposal of Show-cause notice.

(1)The Disciplinary Committee, after providing an opportunity of being heard to the notice, shall dispose of the show-cause notice by a reasoned order.(2)The Disciplinary Committee shall dispose of the show-cause notice within a period of 180 days of the issue of the show-cause notice.(3)The order under sub-regulation (1) may provide for-(a)closure of show-cause notice without any direction;(b)warning;(c)any of the actions under sub-sections (2), (3) and (4) of section 220;(d)a reference to the Board to take any action under sub-section (5) of section 220 or sub-section (2) of section 236; or(e)any other action or direction as may be considered appropriate.(4)The order under sub-regulation (1) shall not become effective until thirty days have elapsed from the date of issue of

the order, unless the Disciplinary Committee states otherwise in the order along with the reasons for the same.(5)The order under sub-regulation (1) shall be issued to the notice immediately, and be published on the website of the Board.(6)If the order under sub-regulation (1) suspends or cancels the registration of a service provider, the Disciplinary Committee may, if it considers fit, require the service provider to-(a)discharge pending obligations, if any;(b)continue its functions till such time as may be directed, only to enable clients to shift to another service provider; and(c)comply with any other directions.

Chapter V

Restitution

14. Restitution.

(1)Where a direction has been issued, to any person to disgorge the amount under sub-section (4) of section 220, the Board shall endeavour to realize the amount of disgorgement expeditiously.(2)The Board shall, as soon as after the realization of the amount of disgorgement, invite claims by a public announcement from persons, who have suffered loss on account of the contravention underlying the direction under sub-section (4) of section 220, seeking restitution from the disgorged amount.(3)The persons referred to in sub-regulation (2) shall submit claims in Form A within 30 days of the public announcement.(4)The Board shall scrutinise the claims and prepare a list of valid claims within 30 days of the last date for receipt of claims.(5)The Board shall disburse such amount proportionately among the claimants within 30 days of preparation of the list of valid claims. Form A(Under Regulation 14(3) of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017) Claim under Order No... dated under section 220(4) of the Code

Sl. No.	Description	Particulars
1.	Name and Address of the Claimant	
2.	Identity of the Claimant(a) Aadhaar No.(b) PAN(c) Bank account no, name of the bank, branch to which money is to be remitted and IFSC code	
3.	Please explain how you have lost money on account of contravention as mentioned under section 220(4)	
4.	Please show computation of loss suffered by you	

Verification I hereby verify and affirm that the contents as stated above are true and correct to the best of my knowledge and belief and no material fact has been concealed.(Signature of the Claimant) Note: If the amount of claim exceeds Rs. 10,000, this verification shall be done before a Notary for the purpose of submission of claim.