

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019

UNION OF INDIA

India

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Rule

INSOLVENCY-AND-BANKRUPTCY-BOARD-OF-INDIA-INSOLVENCY-R of 2019

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IBBI/2019-20/GN/REG050. - In exercise of the powers conferred by clause (t) of sub-section (1) of section 196, sub-section (1) and clauses (zn), (zo), (zp) and (zq) of sub-section (2) of section 240 read with clause (e) of section 2 and 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: -

Chapter I Preliminary

1. Short title and commencement.

(1)These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.(2)They shall come into force from the 1st day of December, 2019.

2. Application.

- These regulations shall apply to insolvency resolution process for personal guarantors to corporate debtors.

3. Definitions.

- In these regulations, unless the context otherwise requires, -(a)"associate" in relation to a creditor, a resolution professional or professionals engaged by resolution professional, as the case may be, shall have the same meaning as assigned to it in relation to a debtor in sub-section (2) of section 79;(b)"Code" means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);(c)"corporate debtor" means a corporate person for whom the guarantor has given a personal guarantee;(d)"electronic means" means an authorised and secured computer programme which is capable of producing confirmation of sending communication to the participant entitled to receive such communication at the last electronic mail address provided by such participant and keeping record of such communication.(e)"form" means a form appended to these regulations;(f)"participant" means a person entitled to attend a meeting of creditors and includes a creditor, the guarantor, the resolution professional, and any other person authorised through a resolution by creditors to attend such meeting;(g)"resolution process" means the insolvency resolution process of a guarantor;(h)"resolution process commencement date" means the date of admission of an application under section 100;(i)"resolution process costs" shall mean-(i)fees payable to the resolution professional;(ii)expenses incurred on and by the resolution professional for carrying out the resolution process, including the fee of professionals engaged, if any;(iii)finances raised for the resolution process, and costs incurred in raising such finances; and(iv)such other costs directly relatable to the resolution process, to the extent approved or ratified by the creditors;(j)"section" means section of the Code;(k)words and expressions used and not defined in these regulations but defined in the Code and the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 shall have the respective meanings assigned to them in the Code and the said rules.

Chapter II

General

4. Eligibility of resolution professional.

(1)An insolvency professional shall be eligible to be appointed as a resolution professional for a resolution process, if-(a)he, the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;(b)he is not subject to any ongoing disciplinary proceeding or a restraint order of the Board or of the insolvency professional agency of which he is a professional member; and(c)the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the resolution process.Explanation. - For the purposes of this sub-regulation, -(i)a person shall be considered

independent of the guarantor, if he-(a)is not an associate of the guarantor;(b)is not a related party of the corporate debtor; and(c)has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor;(ii)the expression "related party" shall have the meaning assigned to it in sub-section (24) of section 5.(2)An insolvency professional, other than who has filed an application under section 94 or 95 on behalf of a guarantor or a creditor, as the case may be, shall provide a written consent in Form A to the Adjudicating Authority before his appointment as resolution professional in a resolution process.

5. Preservation of records.

- The resolution professional shall preserve a physical as well as an electronic copy of the records relating to resolution process of the guarantor as per the record retention schedule, as may be communicated by the Board in consultation with insolvency professional agencies.

6. Debt counseling.

- Debt counseling in relation to resolution process may be provided to a guarantor by such person as may be recognised by the Board or the Central Government, as the case may be.

Chapter III

Registration of Claims

7. Submission and verification of claim.

(1)A creditor shall submit its claim along with proof to the resolution professional in Form B, on or before the last date mentioned in the public notice issued under sub-section (1) of section 102.(2)The creditor shall bear the costs relating to submission of the claim, including proof, under these regulations.(3)A creditor may prove its claim on the basis of-(a)records available in an information utility, or(b)any other documentary evidence which substantiates the existence of claim.(4)The resolution professional may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.(5)The resolution professional shall verify each claim as soon as it is received and prepare a list of creditors under subsection (1) of section 104 within thirty days from the date of public notice.(6)Where the amount claimed by a creditor is not precise due to any reason, the resolution professional shall make the best estimate of the amount of the claim based on the information available with him.(7)The resolution professional shall modify the amounts of claims admitted, including the estimates of claims made under sub-regulation (6), as soon as may be practicable, after he comes across additional information warranting such revision, till the approval of a repayment plan by the creditors.(8)The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the resolution process commencement date.Explanation. - For the purposes of this sub-regulation, "official exchange rate" means the reference rate published by the Reserve Bank of India or derived from such reference rate.

8. Transfer of debt due to creditors.

(1) Where a creditor assigns or transfers the debt to any person during the resolution process period, both parties shall provide the resolution professional the terms of such assignment or transfer, and the identity and details of the assignee or transferee. (2) The resolution professional shall notify each creditor and the Adjudicating Authority of any resultant change in the list of creditors within two days of such change.

9. List of creditors.

(1) The list of creditors under sub-section (1) of section 104 shall contain the names of creditors, amount claimed, amount admitted and security interest, if any, in respect of such claims. (2) The resolution professional shall - (a) make the list of creditors available for inspection by the persons who submitted claims with proof; (b) serve a copy of the list of creditors to the guarantor; (c) make available the list of creditors on the website, if any, of the guarantor; (d) present the list of creditors at the meeting of creditors; and (e) file a certified copy of the list of creditors with the Adjudicating Authority along with the repayment plan.

10. Statement of affairs.

(1) The resolution professional shall prepare a statement of affairs of the guarantor for the purposes of clause (b) of subsection (3) of section 107. (2) The statement of affairs shall include the following information of the guarantor - (a) assets and liabilities for the preceding three financial years and the current financial year; (b) details of the excluded assets and excluded debts; (c) income statement for the preceding three financial years and the current financial year; (d) income-tax returns filed by the guarantor, if any, for the preceding three financial years; (e) creditor wise amount due, broken up into secured and unsecured debts for the preceding three financial years; (f) details of debt owed by guarantor to his associates for the preceding three financial years; (g) guarantees given in relation to any of his debts, and whether any of the guarantors is an associate of the guarantor; and (h) details of the financial statements for the business owned by the guarantor, or of the firm in which he is a partner, as the case may be, for the preceding three financial years, if applicable.

Chapter IV

Meetings of Creditors and Voting

11. Meeting of creditors.

(1) A creditor, who is included in the list of creditors, shall be entitled to participate in the meetings of creditors. (2) The voting share of each creditor shall be in proportion to the debt owed to such creditor. (3) The resolution professional shall convene the first meeting of creditors in accordance with sub-section (1) of section 107 and shall convene the meeting, by giving such notice to the other participants as decided by the creditors, which shall not less than forty-eight hours. (4) The

resolution professional shall convene a meeting of creditors on a request by creditors having thirty-three percent of voting share of creditors.(5)The notice under this regulation shall be served on every participant at the address provided to the resolution professional in accordance with regulation 12.(6)Unless otherwise provided in the Code, any decision of the creditors shall require approval of more than fifty percent of voting share of the creditors who voted.

12. Contents of the notice for a meeting.

(1)The notice convening the meeting of creditors shall inform the participants of the venue, the time, the date of the meeting and of the options available to -(i)participants to attend the meeting either in person, through video conferencing, or through a proxy; and(ii)creditors to cast vote in person, through a proxy, by electronic means, or by electronic proxy, as the case may be.(2)The notice of the meeting shall carry the agenda, which shall include the following-(a)list of matters to be discussed;(b)list of issues to be voted upon;(c)relevant documents in relation to the matters to be discussed and issues to be voted upon.(3)If an option to attend the meeting through video conferencing is made available to the participants, the notice of the meeting shall -(a)state the process and the manner for attending the meeting;(b)provide the login ID and the details of a facility for generating password for access to the meeting in a secure manner; and(c)provide contact details of the person who shall address the queries connected with the video conferencing.(4)If an option to cast vote by electronic means is made available to the creditors, the notice of the meeting shall -(a)state the process and the manner of casting vote by such means;(b)provide the login ID and the details of a facility for generating password for access to the electronic means for casting vote in a secure manner; and(c)provide contact details of the person who shall address the queries connected with the electronic means.

13. Quorum.

(1)A meeting of creditors shall be quorate if creditors representing at least thirty-three percent of voting share are present in person, by proxy or through video conferencing: Provided that the creditors in a meeting may modify the percentage of voting share required for quorum in respect of any future meetings of the creditors.(2)Where a meeting of creditors could not be held for want of quorum, unless the creditors have previously decided otherwise, the meeting shall automatically stand adjourned to the same time and place on the next day and on that day, no quorum shall be required.

14. Conduct of meeting.

(1)The resolution professional shall preside over the meeting of creditors.(2)At the commencement of a meeting, the resolution professional shall take a roll call, when every participant, including those attending by proxy or through video conferencing, shall state, for the record, the following -(a)his name;(b)the capacity in which he is attending;(c)the creditor he is representing, if applicable; and(d)that he has received the agenda and all the relevant material for the meeting.(3)After the roll call, the resolution professional shall inform the participants of the names of all persons who are present for the meeting and confirm if the required quorum is

complete.(4)The resolution professional 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 participants and any other person whose presence is required by the resolution professional, shall be allowed access to the meeting, without the permission of the resolution professional.

15. Voting by creditors.

(1)The resolution professional shall take a vote of the creditors present in the meeting on any item listed for voting after discussion on the same.(2)At the conclusion of the meeting, the resolution professional shall prepare minutes of the meeting, including the names of creditors, who voted for, against or abstained from voting on the items put to vote in the meeting.(3)The resolution professional 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, and(b)seek a vote on the items 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, where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes as per clause (a).(4)At the end of the voting period, the resolution professional shall record the decision arrived at on the items along with the names of creditors who voted for, against or abstained from voting on the items, after considering the voting at the meeting and through the electronic means.(5)The resolution professional shall circulate a copy of the record made under sub-regulation (4) to all participants within twenty-four hours of the conclusion of the voting.

16. Voting by proxy.

(1)A creditor, who is entitled to vote at a meeting of creditors, shall be entitled to appoint an individual, who shall not be an associate of the guarantor, as a proxy to attend and vote on its behalf.(2)For the purpose of sub-regulation (1), a creditor shall deliver Form C, duly completed to the resolution professional at least twenty-four hours prior to the meeting of creditors.(3)A proxy may vote by electronic means on behalf of the creditor.

Chapter V

Repayment Plan

17. Contents of repayment plan.

(1)The repayment plan shall provide the following -(a)the term of the repayment plan and its implementation schedule, including the amounts to be repaid and dates of repayment to creditors;(b)the source of funds that will be used to pay resolution process costs and that such payment shall be made in priority over any creditor;(c)a minimum budget for the duration of the repayment plan, to cover the reasonable expenses of the guarantor and members of his immediate family to the extent they are dependent on him, provided that at least ten percent of the realizable income of the guarantor shall be utilized for repayment of debts;(d)financing required for

implementation of the repayment plan;(e)if the guarantor has any business, the manner in which it is proposed to be conducted during the course of the repayment plan, and the role of the resolution professional;(f)the manner in which funds held for the purposes of the repayment plan, invested or otherwise dealt with, pending repayment to creditors;(g)the functions which are to be undertaken by the resolution professional, including supervision and implementation of the repayment plan;(h)variation of onerous terms of a contract or transaction involving the guarantor;(i)the details of excluded assets and excluded debts of the guarantor; and(j)terms and conditions for the discharge of the guarantor.(2)The repayment plan may provide for the following-(a)transfer or sale of all or part of the assets of the guarantor along with the mode and manner of such sale;(b)administration or disposal of any funds of the guarantor;(c)satisfaction or modification of any security interest;(d)reduction in the amount payable to creditors;(e)curing or waiving of any breach of a debt due from the guarantor;(f)modification in the terms of repayment of any debt due from the guarantor;(g)part of the income of the guarantor to be used for the repayment of the debt, and the manner of calculating the income of the guarantor;(h)the manner in which funds held for the purpose of repayment to creditors, and not so repaid at the end of the repayment plan, are to be dealt with; and(i)such other matters as may be required by the creditors.

18. Purchase of assets by certain persons.

(1)The following persons shall not purchase or acquire any interest in the property of guarantor, directly or indirectly, without permission of the Adjudicating Authority -(a)the resolution professional or any partner or director of the insolvency professional entity of which the resolution professional is a partner or director;(b)any professional appointed by the resolution professional for the resolution process;(c)any creditor;(d)any company where the guarantor or a creditor is a promoter or director;(e)any associate of the guarantor, creditor or resolution professional.(2)The Adjudication Authority may set aside purchase or acquisition made contrary to the provisions of this regulation and may make such order as it may deem fit.

19. Filing with the Adjudicating Authority.

(1)The resolution professional shall file the repayment plan, as approved by the creditors, along with the report mentioned in sections 106 or 112, as the case may be, with the Adjudicating Authority on or before completion of one hundred and twenty days from the resolution process commencement date.(2)The resolution professional shall provide the copies of the documents filed with the Adjudicating Authority under sub-regulation (1) to the guarantor and the creditors, within three days from the date of such filing.

20. Breach of repayment plan by the guarantor.

(1)If in the opinion of the resolution professional, the guarantor has failed in implementation of the repayment plan, the resolution professional shall, within three days of knowledge of such failure, issue a notice to the guarantor identifying the failure and requiring him, within fifteen days of receipt of the notice, to-(a)address such failure if it can be addressed, or(b)provide an explanation for the failure.(2)If the guarantor, within the period specified under sub-regulation (1),

-(a)addresses the failure in implementation of the repayment plan; or(b)provides a satisfactory explanation for such failure, the resolution professional shall report the failure to creditors within seven days of the date of failure addressed or explanation provided for such failure.(3)In cases not covered under sub-regulation (2), the resolution professional may apply to the Adjudicating Authority under sub-section (2) of section 116 for directions, if he is of the opinion that the failure will affect the implementation of the repayment plan.

21. Application for discharge order.

(1)The resolution professional shall, for the purpose of discharge order, file an application along with copies of the notice and report under section 117 to the Adjudicating Authority under section 119.(2)On consideration of the notice and the report under sub-section (1) of section 117, the Adjudicating Authority may pass the discharge order.

22. Non-cooperation by guarantor.

- In the event of non-cooperation of the guarantor at any time during the resolution process period or during the implementation of the repayment plan, the resolution professional shall prepare a statement to this effect and file the same with the Adjudicating Authority for appropriate directions.FORM AWritten Consent to Act as Resolution Professional(Under regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)[Date]ToThe 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 resolution professional in the matter of [name of guarantor].

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 resolution professional for the resolution process of [name of the guarantor].

2. In accordance with regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, I hereby give consent to the proposed appointment for the resolution process of [name of the guarantor]

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 resolution professional.(d)I am eligible to be appointed as resolution professional of the guarantor under regulation 3 of the Insolvency and Bankruptcy Board

of India (Insolvency Resolution 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 am having the following processes in hand:

Sl. No.	Role as	No. of processes on the 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 BClaim With Proof by a Creditor(Under regulation 7(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)[Date]To[Name of the Resolution Professional][Address as set out in public announcement]From[Name and address of the creditor]Subject: Submission of claim with proof in the matter of [name of guarantor].Madam/Sir,[Name of the creditor], hereby submits the claim with proof in respect of the resolution process of [name of guarantor].The details for the same are set out below:

1.	Title and full name of creditor				
2.	Identification number of creditor	Aadhaar Number	PAN	CIN	GSTIN
3.	Address	Present	Permanent Business		
4.	Email				
5.	Total amount of claim(Including any interest as on the				

- resolution process
commencement date)

6. Details of documents by
reference to which the debt
is substantiated
7. Details of any dispute, as
well as the record of such
dispute with respect to
claim (if any)
8. Details of how debt was
incurred and the
date when such debt was
incurred
9. Details of any mutual
credit, mutual debts,
or other mutual dealings
between the guarantor
and the creditor, which
may be set-off against the
claim
10. Details of any retention of
title arrangements in
respect of goods or
properties to which the
claim refers
11. Details of the bank
account to which the
amount of the claim or any
part thereof can be
transferred pursuant to
a repayment plan (Account
Number, IFS Code,
Branch and Bank)
12. Details of any security
held (including value and
date when it was given)
13. If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will not agree to forfeit my

I agree to forfeit my right to enforce my security [insert description] during the period of the repayment plan. I do not agree to forfeit my

- determine the voting share as per section 110 of the Code
- right to enforce my security [insert description] during the period of the repayment plan.
- (i) Amount claimed by me in the corporate insolvency resolution process / liquidation process of the corporate debtor (ii) The amount admitted by the resolution professional / liquidator of said process (iii) Amount realized by me in the said process, if any
- Following information regarding the guarantor (to the extent known)-
- 14.
- 15.

Assets of the guarantor

Business of the guarantor

Firms in which guarantor is a partner

Bank account details of the guarantor

Name, age and address of spouse, children, parents and siblings of the guarantor

Signature of creditor or person authorised to act on his behalf [Please enclose the authorization document if this form is being

submitted on behalf
of a creditor]

Name in block
letters

Address of person
signing

DeclarationI, [name of creditor], currently residing at [insert address], hereby declare and state as follows:-

1. [Name of guarantor], the guarantor was, at the resolution process commencement date, being the [date] of [year], indebted to me to the sum of Rs. [insert amount of claim].

2. In respect of my claim of the said sum or any part thereof, I have relied on the following documents:

(a)(b)(c)(d)3. The aforesaid documents are true, valid and genuine to the best of my knowledge, information and belief.

4. In respect of the said sum or any part thereof, I have not, nor has any person by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following-

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor which may be set-off against the claim.]

Date:

Place: (Signature of the creditor)

VerificationI, [Name of creditor] the creditor here in above, do hereby verify that the contents of this proof of claim are true and correct to the best of my knowledge and belief and that no material facts have been concealed therefrom.Verified at _____ on this _____ day of _____ 20____(Signature of the creditor)FORM CProxy Form(Under regulation 16(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019)Full name of the guarantor -[Insert matter name / application number for the resolution process]

Full Name of Creditor

Address Present Permanent Business

Identification number Aadhaar Number PAN CIN GSTIN

Email

I, being [insert name of creditor] holding [insert % of voting share] in the debt of the guarantor, hereby appoint:

1. Full name
Address Present Permanent Business

Identification Number Aadhaar Number PAN CIN GSTIN

E-mail

Signature

Or failing him;

2. Full name
Address Present Permanent Business

Identification Number Aadhaar Number PAN CIN GSTIN

E-mail

Signature

as my proxy to attend and vote for me and on my behalf at the meeting of creditors 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: