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The Insolvency and Bankruptcy Code, 2016 a comprehensive and systemic reform, aims to consolidate the laws relating to insolvency of companies and limited liability entities (including limited liability partnerships and other entities with limited liability), unlimited liability partnerships and individuals, presently contained in a number of legislations, into a single legislation. The passing of this Code and implementation of the same has given boost to ease of doing business in India. The Code provides insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner and for maximization of value of assets of such persons and matters connected therewith or incidental thereto.

**InSync** in this edition aims at explaining the latest regulations and clarifications with respect to the Insolvency and Bankruptcy Code, 2016.

**Who can render services as an Insolvency Professional under the Insolvency and Bankruptcy Code, 2016?**

The Insolvency and Bankruptcy Board of India has issued a clarification relating to persons who can render services as an Insolvency Professional under the Insolvency and Bankruptcy Code, 2016 (Code).

**Relevant Provisions**

**Section 3 (19) of the Code** - “Insolvency Professional” means a person enrolled under Section 206 of the Code, with an Insolvency Professional Agency (IPA) as its member, and is also registered with the Insolvency and Bankruptcy Board of India (IBBI) as an Insolvency Professional (IP) under Section 207 of the Code.

**Section 206 of the Code** - Two essentials that need to be fulfilled by each individual, to be recognized as an Insolvency Professional under the Code are:

- a. Must be enrolled as a member of an Insolvency Professional Agency;

**Section 3(19) of the Code defines Insolvency Professional to mean person enrolled with Insolvency Professional Agency and registered with Insolvency and Bankruptcy Board of India**

**Board may specify only a certain category of professionals or persons possessing certain requisite qualifications and experience to be eligible for registration as an IP under the Code.**

b. Must be registered with the Insolvency and Bankruptcy Board of India.

**Section 207 of the Code** - Registration of Insolvency Professionals:

- a. Every IP Must first be enrolled with an IPA and then register himself with the IBBI.
- b. Board may specify only a certain category of professionals or persons possessing certain requisite qualifications and experience to be eligible for registration as an IP under the Code.

**IBBI (Insolvency Professionals) Regulations, 2016 (Regulations)**

Only three sets of persons are eligible for registration as IPs:

- a. chartered accountants, company secretaries, cost accountants, and advocates, who have been in practice for 15 years, are eligible to seek registration for limited period;
- b. chartered accountants, company secretaries, cost accountants and advocates with 10 years' of post-membership experience (practice or employment) and graduates with 15 years' of post-qualification managerial experience are eligible for registration on passing the Limited Insolvency Examination; and
- c. any other person is eligible for registration as IP on passing the National Insolvency Examination.

**Conclusion**

The Code read with the Regulations allow only a person having the required qualification and experience to be enrolled as a member of an IPA and thereafter registered as an IP with the IBBI. Only such a person can act as IP and render services as an IP under the Code. No person other than persons registered as IPs with the IBBI can act as IP. Insolvency Professional Entities are neither enrolled as member of an IPA nor registered as IP with the IBBI. They cannot act as IPs under the Code.

**IBBI (Insolvency Professionals) Regulations, 2016 provides only three sets of persons to be eligible for registration as Insolvency Professional**

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**No person other than persons registered as IPs with the IBBI can act as IP. Insolvency Professional Entities are neither enrolled as member of an IPA nor registered as IP with the IBBI. They cannot act as IPs under the Code**

**These regulations provide the process from initiation of**

**IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017**

**insolvency resolution of eligible corporate debtors till its conclusion with approval of the resolution plan by the Adjudicating Authority**

**The fast track process to be completed within a period of 90 days, as against 180 days in other cases**

**A creditor or a corporate debtor to file application, along with the proof of existence of default, to the NCLT for initiating fast track resolution process**

**Corporate Debtor includes small companies, start-ups (other than partnership firms), or unlisted companies with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding Rs.1 crore**

IBBI has notified the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017. The regulations came into force on 14.06.2016.

### **Salient Features of the Regulations**

(i) It provides the process from initiation of the insolvency resolution of eligible corporate debtors till its very conclusion with approval from the Adjudicating Authority relating to the Resolution Plan.

(ii) The fast track process to be completed within a period of 90 days, as against 180 days in other cases.

(iii) Adjudicating Authority i.e. NCLT, if satisfied, may extend the period of 90 days by a further period up to 45 days for completion of the process.

(iv) The fast track process is applicable to specified corporate debtors i.e. small company, as defined under clause (85) of section 2 of the Companies Act, 2013; or a Startup (other than the partnership firm), as defined in the notification dated 23rd May, 2017 of the Ministry of Commerce and Industry and an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding Rs.1 crore.

### **Conclusion**

These Regulations boosts the fast-tracking insolvency resolution process for specified category of corporate debtors. Faster resolution will attract investors to start-ups, most of which don't survive long, as well as small companies. This was one of the reasons why the government, as part of its Start-up India initiative, wanted to give start-ups an easy option to exit within 90 days. Currently, at least 81 corporate insolvency resolution processes are going on under the Code.

**For any clarification or delineation, feel free to contact us.**



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