

Comments on draft Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations

Our suggestion/ recommendation w.r.t. the proposed draft regulations are as under

Eligibility criteria of Bankruptcy Trustee	
<p>Eligibility:</p> <p>Eligibility criteria of Insolvency professional to act as a Bankruptcy Trustee has been provided</p>	<ul style="list-style-type: none"> • IP appointed as IRP/ RP/ or Liquidator of a Corporate Debtor for whom the bankrupt is a personal guarantor- shall not be eligible to be appointed as Bankruptcy Trustee of the said personal guarantor. The same does not seem reasonable. It is better that the bankruptcy proceeding against the guarantor is handled on a consolidated basis along with the corporate debtor
<p>Preliminary Report</p>	<ul style="list-style-type: none"> • Submission of Preliminary Report to Bankrupt should not be mandatory. The Bankruptcy Trustee may refuse to share the same with reasons to be recorded in writing - as the information provided therein may be of confidential nature.
<p>Quorum</p>	<ul style="list-style-type: none"> • Total number of members required to quorate the meeting – missing. The following may be inserted in regulation 24: <ol style="list-style-type: none"> i. A meeting of the committee shall be quorate if creditors representing fifty percent of voting share are present in person or by authorized person. ii. The quorum requirement may be modified through a creditors’ resolution, for any future meetings of creditors.
<p>Claims</p>	<ul style="list-style-type: none"> • Like liquidation regulations, manner of submitting claim should be specified in the regulations, for ease of the stakeholders and uniformity in details.

	<ul style="list-style-type: none">• Notably, there might be different classes of categories of creditors in case of individuals too, e.g. (i) to whom the individual owes debt pursuant to a guarantee contract, (ii) employees/workmen of the individual, (iii) liability of the individual as a partner of a partnership firm, etc.
Voting by members	<ul style="list-style-type: none">• Votes of members present and voted should be counted for the purpose of approval of the resolution. That is, absent and abstaining creditors should not be considered in the numerator as well as denominator. Regulations should clarify the same, in view of the Supreme Court ruling in the matter of <i>K. Shashidhar vs. Indian Overseas Bank</i>.
Bank account	<ul style="list-style-type: none">• Opening of new bank account should be optional.• The regulation may also provide that the bankruptcy Trustee may change the name of the existing bank account of the bankrupt, if any followed by the words “in bankruptcy process” for the receipt of all the money due to the bankrupt. This will ensure operational convenience to the bankruptcy trustee.
Appointment of Registered valuer	<ul style="list-style-type: none">• Appointment of registered valuer should be mandatory as it is more important to determine the value of excluded assets;• Circumstance under which the bankruptcy trustee is required to appoint additional registered valuer – should be prescribed.
Person to extend co-operation	<p>Following to be included:</p> <ul style="list-style-type: none">• Banks and financial institutions holding account of the bankrupt; and• Co-dwellers• Joint asset holders

Debt payable at future time	Reg. 13 (2) is not clear – the same may be modified in line with regulation 28 (2) of the Liquidation Regulations.
Reserve Price	<ul style="list-style-type: none"> • Regulation 35 (1) may be amended as follows: <i>“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.”</i> • Time limit of appointment of valuers- should be provided; • Bankruptcy Trustee may also be entitled to reduce the reserve price upto 25% of the reserve price determined by the valuer, in consultation with the committee of creditors, if after all the possible efforts the assets could not be sold at a reserve price determined by the valuer; • For reducing reserve price beyond 25% of the reserve price, approval of fifty-one percent of the committee of creditors shall be mandated. • Reserve price should not be more than 6 months old- this requirement should be deleted to keep parity with the proposed amendments in Liquidation process regulations.

Apart from the above, it is suggested that before opting for bankruptcy there has to be regulation for the insolvency of the bankrupt. Also, as suggested by WG, MCA may consider amending the Code w.r.t. constitution of committee of creditors in case of Bankruptcy of Personal Guarantor vide putting a cap on the number of members in CoC (besides guiding the composition thereof) as it may not be feasible to have a meeting and voting by all the members of CoC.