

The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2026

On June 8, 2026, the Insolvency and Bankruptcy Board of India's ("IBBI") has notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2026 ("**Amendment Regulations**") to amend the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**"). The amendments have introduced key regulations aimed at enhancing creditor participation and improving transparency in the corporate insolvency resolution process ("**CIRP**").

Salient features of the Amendment Regulations

The key amendments are as follows:

1. **Operational creditor participation in Committee of Creditors ("CoC"):** The newly introduced Regulation 16E of the CIRP Regulations now provides that where creditors other than a scheduled bank or public financial institution hold more than 66% of the voting share in the CoC:
 - a) the Resolution Professional ("**RP**") must invite the 5 (five) largest unrelated Operational Creditors ("**OCs**") (including 3 (three) largest statutory authorities owed dues) to attend the CoC meetings;
 - b) such OCs will attend as observers without any voting rights; and
 - c) their observations will be recorded in the minutes of the meeting.

Further, in case of a corporate debtor without financial debt, the CoC is constituted by 18 (eighteen) largest OCs by value. The Amendment Regulations have now specified that such OCs would need to be unrelated. If the number of unrelated OCs is less than 18 (eighteen), the CoC must include all unrelated OCs.
2. **Approval of the CoC for Insolvency Resolution Process Costs ("CIRP Costs"):** Regulation 31B of the CIRP Regulations provided for CoC approval of the CIRP Costs. This has now been elaborated as follows:
 - a) CIRP Cost:
 - i) in the first CoC meeting, all CIRP Costs till date, along with justification, must be placed for CoC approval; and
 - ii) thereafter, CIRP Costs will be incurred only with prior CoC approval for which, the RP will present:
 - A. cost estimates for the period upto the next CoC meeting; and
 - B. a comparison of actual versus approved costs at each meeting;

- b) Going concern assessment report:
 - i) the RP will prepare a going concern assessment report covering income, expenditure, cash flows, working capital needs, and material risks value erosion risks from continuation or suspension of operations;
 - ii) the RP must place the going concern assessment report at the first CoC meeting; and
 - iii) basis the going concern assessment report, the CoC must decide whether the operations of the corporate debtor will be continued and, if so, the scope and duration of such operations.

3. Recording of CoC's deliberations

Regulation 39(3)(b) of the CIRP Regulations required the CoC to (while considering and voting on resolution plans) record its deliberations on the feasibility and viability of each plan.

This has now been expanded, requiring the CoC to record:

- a) deliberations and rationale on feasibility and viability of resolution plans;
- b) expected realisable value to the creditors versus fair and liquidation value; and
- c) adequacy of market discovery including, where applicable, use of challenge mechanisms or re-invitation of plans.

Analysis

Scrutiny of CoC's decisions

Prior to the amendments, OCs of a corporate debtor with financial debt could attend CoC meetings only if their aggregate debt was at least 10% of the total debt.

Now, OC participation in CoC meetings and the recording of their observations will add a layer of scrutiny in the relevant CIRPs. This is particularly significant where entities such as asset reconstruction companies (which typically acquire pre- or post-insolvency debt from banks or financial institutions) constitute the majority of the CoC. The recorded observations may also prove relevant in disputes regarding CIRP conduct, where adjudicating authorities or courts may review CoC meeting minutes as a record of deliberations and decisions.

Further, while the commercial wisdom of the CoC remains largely unfettered, the Amendment Regulations now require the CoC to further demonstrate its decision-making rationale rather than invoke commercial wisdom as a conclusory justification. To ensure transparency and accountability and reduce litigation risks, the CoC must also record its decisions regarding processes adopted for value maximisation, including challenge processes.

Going concern assessment

The emphasis on conducting a going concern assessment early in the CIRP is a welcome development. Value deterioration is a persistent concern and assessing the viability of operations at the outset can help preserve enterprise value. However, the amendments now give the CoC a more direct role; based on the risk of value erosion, the CoC may choose to suspend operations. Under the existing framework, the RP bears a statutory obligation to manage the corporate debtor as a going concern during the CIRP. It remains to be seen how this will operate in practice, particularly since the overarching statutory obligation on the RP under the Insolvency and Bankruptcy Code, 2016 ("IBC") to maintain the corporate debtor as a going concern has not been diluted.

Additionally, a going concern analysis is inherently dynamic and bound to evolve with changing facts and circumstances. It is unclear whether the initial assessment and any resulting decision to continue or suspend operations may be periodically revisited by the CoC.

Overall, this should equip the RP and the COC to take commercially prudent and pragmatic views for avoiding unnecessary CIRP costs.

Conclusion

Over the past decade, the IBBI has consistently amended and expanded the CIRP Regulations to address practical challenges, provide procedural clarity, and improve operational efficiency. Amendment Regulations follow the same approach. With a clear focus on preserving and maximising value, they regulate key operational and decision-making issues that were previously not specifically regulated but formed part of most insolvency resolution processes in practice.

The Amendment Regulations strengthen the CoC's powers while also requiring greater transparency and accountability in its decision-making. They seek to balance the sanctity of the CoC's commercial wisdom with the need for that wisdom to be exercised in a non-arbitrary manner, consistent with the broader objectives of the IBC.

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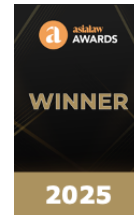
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