

**REPORT OF THE SUB-COMMITTEE OF THE INSOLVENCY
LAW COMMITTEE FOR NOTIFICATION OF FINANCIAL
SERVICE PROVIDERS UNDER SECTION 227 OF THE
INSOLVENCY AND BANKRUPTCY CODE, 2016**

OCTOBER 04, 2019

SUB-COMMITTEE OF THE INSOLVENCY LAW COMMITTEE

New Delhi, October 04, 2019

To

Secretary to Government of India
Ministry of Corporate Affairs
A Wing, Shastri Bhawan
New Delhi - 110001.

Dear Sir,

The Sub-Committee of the Insolvency Law Committee constituted, vide office order No. 30/04/2017-Insolvency Section dated 16th August, 2019, have the privilege and honour to present this Report to the Ministry of Corporate Affairs.

2. The Sub-Committee has benefitted considerably from the interactions with the representatives of financial sector regulators. Based on the interactions with them, the Sub-Committee notes that from the perspective of insolvency resolution, there are three classes of financial service providers (FSPs), namely, (a) FSPs, whose business and regulation are not different from that of a corporate debtor, can be resolved under the Insolvency and Bankruptcy Code, 2016 (Code) as it is; (b) FSPs, whose business and regulation are fairly different from that of a corporate debtor, can be resolved under the Code with certain modifications; and (c) FSPs, whose business and regulation are substantially different from that of a corporate debtor, need to be resolved outside the Code. The Sub-Committee recommends a generic framework for resolution of category (b) FSPs, as an interim arrangement, pending provision of a specialised framework for resolution of FSPs. It, however, leaves to the wisdom of the regulator concerned to decide whether and when to use the Code as it is, use the Code with modifications, or not to use the Code at all for an FSP.

3. We thank the Ministry of Corporate Affairs for the opportunity to develop an interim framework for resolution of FSPs. We believe that the proposed framework would address the immediate concerns in FSPs as well as lead to the evolution of a regular framework.

Yours sincerely,

Sd/-
(M. S. Sahoo)
Chairperson

Sd/-
(Shashank Saksena)
Member

Sd/-
(Lily Vadera)
Member

Sd/-
(Sunil Mehta)
Member

Sd/-
(R. V. Verma)
Member

Sd/-
(Bahram Vakil)
Member

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PART I

INTRODUCTION

BACKGROUND

The Insolvency and Bankruptcy Code, 2016 (**IBC / Code**) provides a consolidated framework for the reorganisation, insolvency resolution and liquidation of corporate persons, limited liability partnerships, partnership firms and individuals in a time-bound manner.¹ The definition of 'corporate person' under the IBC does not include any financial service provider (**FSP**).² However, section 227 of the IBC empowers the Central Government in consultation with the appropriate financial sector regulators to notify FSPs or categories of FSPs for the purpose of their insolvency and liquidation proceedings which may be conducted under the IBC.

The definition of an FSP under the IBC means a person engaged in the business of providing financial services in terms of an authorisation issued or registration granted by a financial sector regulator.³ Therefore, only a regulated entity is an FSP. The definition of financial services includes services such as accepting deposits, safeguarding and administering assets consisting of financial products belonging to another person, effecting contracts of insurance and offering, managing or agreeing to manage assets consisting of financial products belonging to another person (amongst other financial services).⁴ The rationale behind the exclusion of FSPs from the purview of the IBC is that financial firms are different from other firms. Compared to other firms which mostly rely on equity and debt, many FSPs handle large amounts of consumers' money.⁵ Moreover, some of them are systemically important as their failure might disrupt the financial system and have an adverse effect on the economy.⁶ The Committee to Draft Code on Resolution of Financial Firms (2016) had noted as follows⁷:

"Standard insolvency and bankruptcy processes are usually not considered suitable for financial firms, particularly for those that handle consumer funds and those considered to be of systemic significance. Further, such processes, even if they are efficient, tend to drag on for longer periods of time than are acceptable for instances of financial firm failure, exacerbating the threats to consumer funds and systemic stability. Also, the fear of a financial firm going into a long-winded process may trigger "runs" on these firms even when they have not really failed. Hence, it is important to have a credible resolution regime under an expert statutory institution that is able to ensure efficient, orderly and fair resolution of financial firms."

The Committee, in addition to recommending a specialised resolution framework for certain FSPs, had also recommended that certain other FSPs could be covered under the IBC. In this regard, it had noted the following⁸:

¹ Section 2, IBC.

² Section 3(7), IBC.

³ Section 3(17), IBC

⁴ Section 3(16), IBC.

⁵ Report of the Committee to Draft Code on Resolution of Financial Firms, Department of Economic Affairs, Ministry of Finance, September 21, 2016, 4-5.

⁶ Ibid 5.

⁷ Ibid.

⁸ Ibid.

“Only certain financial firms that do not handle consumers’ money and do not pose systemic risk may be covered under the Insolvency and Bankruptcy Code, as the rationale for covering under a specialised resolution regime does not apply to such firms.”

Presently, India does not have a specialised comprehensive legal framework for the resolution of FSPs. The Financial Resolution and Deposit Insurance Bill, 2017 (**FRDI Bill**) (which was drafted pursuant to the recommendations of the committee referred to above) sought to establish a consolidated framework for the resolution of certain financial institutions (such as banks, insurance companies, systemically important financial institutions, etc.). However, it has not yet become an Act. Accordingly, the resolution framework for financial firms in India is scattered across several statutes with disparate powers conferred on several financial sector regulators. The following table summarises the current framework:

FSP	Financial Sector Regulator	Resolution Powers
Non-banking finance companies (NBFCs) and Core Investment Companies (CICs) ⁹	Reserve Bank of India (RBI) ¹⁰	<p>RBI can file for winding-up of an NBFC under the Companies Act, 2013 (Companies Act) in exercise of its powers under the Reserve Bank of India Act, 1934¹¹. Grounds for filing a winding up application amongst other things include inability to pay debts.¹²</p> <p>The Finance (No. 2) Act, 2019 has conferred additional resolutions powers on RBI, including:</p> <ul style="list-style-type: none"> removal of directors of NBFCs on grounds of public interest, to prevent the affairs from being conducted in a manner detrimental to the interests of depositors or creditors, in the interest of financial stability or for securing proper management. supersede the board of directors on the grounds specified above and appointment of an administrator for a specified period. frame schemes which may provide for amalgamation, enabling creation of a bridge institution for transferring the viable part of the business to it, reconstruction of the NBFC, etc. These schemes may be prepared in public interest, in the interest of financial stability or enabling the continuance of the activities if it is critical to the functioning of the financial system.
Housing Finance Companies	NHB/RBI ¹³	NHB or RBI can file an application for winding up of an HFC under the Companies Act in exercise of its powers under the National Housing Bank Act, 1987. Grounds for filing a winding up

⁹ CICs with an asset size of INR 100 crore and above are systemically important CICs (a sub-category of NBFCs as per the RBI Act). CICs with an asset size of below INR 100 crore are exempt from registration with the RBI.

¹⁰ Reserve Bank of India Act, 1934.

¹¹ Section 45 MC of the Reserve Bank of India Act, 1934.

¹² All provisions of the Companies Act relating to winding up of a company apply to winding up proceedings initiated on the application made by the RBI.

¹³ The Finance (No. 2) Act, 2019 has amended the National Housing Bank Act, 1987 conferring certain regulatory powers in respect of HFCs on the RBI, while supervisory powers continue with NHB.

(HFCs)		application include inability to pay debts. Provisions of the Companies Act on winding up are applicable. The Finance (No. 2) Act, 2019 has conferred certain regulatory powers on RBI in relation to HFCs, including the power to prohibit HFCs from accepting deposits and alienation of assets.
Commercial Banks ¹⁴	RBI	For commercial banks, the Banking Regulation Act, 1949 provides for three types of resolution instruments: mergers (including reconstruction), acquisition of undertaking, and court-ordered winding up (where RBI may also be appointed as a liquidator). In cases of mergers, RBI may apply to the Central Government for a moratorium on a banking company, after which the RBI prepares a scheme for merger with any other banking institution. For public sector banks, the RBI does not have any resolution power. The respective parent statutes provide that public-sector banks can be wound up only on an order of the Central Government.
Insurance Companies	Insurance Regulatory and Development Authority of India (IRDAI) ¹⁵	Broadly, three methods of resolution have been envisaged: appointment of administrator by IRDAI, winding up on application of requisite number of shareholders or policy holders and IRDAI, and amalgamation of the insurer with another insurer. In case of winding up, the provisions of the Companies Act are applicable, unless otherwise specified in the Insurance Act, 1938.

Most of these resolution approaches have proved to be ineffective or remain untested. Recent instances demonstrating the financial distress and liquidity crunch in certain FSPs, especially NBFCs and HFCs, are demonstrative of the pressing need for an insolvency resolution and liquidation mechanism for such FSPs.

Against this background, and in light of the powers conferred on the Central Government to notify FSPs or categories of FSPs under section 227 of the IBC, the Ministry of Corporate Affairs constituted a sub-committee (**Sub-Committee**) of the Insolvency Law Committee (**ILC**) under the chairmanship of Dr. M. S. Sahoo (Chairperson, Insolvency and Bankruptcy Board of India (**IBBI**) and Member, ILC) by an order dated August 16, 2019 (Annexure I). The Sub-Committee was required to examine the issue further and submit its recommendations to the Ministry of Corporate Affairs on the following terms of reference:

1. *The FSPs or categories of FSPs that can be notified under section 227 of the IBC for the purpose of their insolvency and liquidation proceedings based on inputs received from the Department of Economic Affairs and other financial regulators, keeping the due consideration for the FSPs to be covered under the proposed FRDI Bill so as to rule out any regulatory gap or overlap to cover all FSPs;*
2. *the regulatory framework that may be required for dealing with such FSPs; and*

¹⁴ Banking Regulation Act, 1949 read with the State Bank of India Act, 1955 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

¹⁵ Insurance Act, 1938.

3. *in light of the current financial stress in certain NBFCs and HFCs, the possibility of covering them under specific framework duly factoring the recent amendments made to the Reserve Bank of India Act, 1934 by the Finance Act, 2019.*

Other members of the Sub-Committee included: Dr. Shashank Saksena, Adviser, Department of Economic Affairs and Ex-officio Member, IBBI; Mr. Bahram Vakil, Partner, AZB & Partners and Member, ILC; Mr. Sunil Mehta, Managing Director and Chief Executive Officer, Punjab National Bank and President, Indian Banks Association and Member, ILC; Ms. Lily Vadera, Executive Director, RBI and Member, ILC; and Mr. R. V. Verma, former Chairman and Managing Director, National Housing Bank. The Sub-Committee invited various stakeholders, including representatives of RBI, Securities and Exchange Board of India (**SEBI**), IRDAI and Pension Fund Regulatory and Development Authority (**PFRDA**) to attend its meetings and make submissions for designing an appropriate framework. The invitees included: Mr. Gyaneshwar Kumar Singh, Joint Secretary, Ministry of Corporate Affairs, Ex-officio Member, IBBI and Member Secretary, ILC; Mr. Vaibhav Chaturvedi, General Manager, RBI; Ms. Babitha Rayudu, Chief General Manager, SEBI; Ms. Ripzong S. Lepcha, Assistant General Manager, SEBI; Mr. Chaudhary Suraj, Assistant General Manager, SEBI; Dr. Mamta Suri, Chief General Manager, IRDAI; Mr. Praveen Trivedi, Executive Director, PFRDA; and Mr. Debanshu Mukherjee, Founding Member, Vidhi Centre for Legal Policy, Ms. Shehnaz Ahmed and Ms. Astha Pandey, Senior Resident Fellow and Research Fellow at Vidhi Centre for Legal Policy, respectively. IBBI representatives including Dr. Navrang Saini and Dr. Mukulita Vijayawargia, Whole Time Members, Mr. Ritesh Kavdia, Executive Director, Mr. K. R. Saji Kumar, Executive Director, Mr. Methil Unnikrishnan, General Manager, Dr. Sunil Kumar, Deputy General Manager, Mr. Yadwinder Singh, Assistant Manager, Mr. Asit Behera, Assistant Manager and Ms. Soham Seth, Research Associate also participated in the meetings of the Sub-Committee. It held three meetings on August 22, 2019, August 28, 2019 and September 20, 2019. In the interim, the ILC was briefed during its meeting held on August 29, 2019 on the progress made, based on which it made certain recommendations to the Sub-Committee.

Based on its internal discussions and the recommendations of the ILC, the Sub-Committee hereby submits this report (**Report**) recommending an enabling framework for the insolvency resolution and liquidation of FSPs under the IBC. The proposed framework has been designed in a manner that the basic features of the IBC remain intact.

STRUCTURE OF THE REPORT

This Report contains three parts. Part I of the Report provides a brief background to the formation of the Sub-Committee and the process followed by it. Part II highlights the issues discussed and conclusions drawn. Part III of the Report explains the rationale for the proposed framework and outlines its basic structure and key elements. The order for the constitution of the Sub-Committee dated August 16, 2019 is at Annexure I. A draft notification for notifying FSPs under section 227 of the IBC is at Annexure II. A draft removal of difficulties order to be issued under section 242 of the IBC to modify section 227 is at Annexure III. A draft of the rules prescribing the proposed framework for the resolution of FSPs under section 227 is at Annexure IV. A provisional categorisation of FSPs for the purposes of the applicability of the IBC, as discussed at the Sub-Committee meetings, is at Annexure V. An overview of the entities engaged in the business of providing financial services in India is at Annexure VI.

PART II

KEY ISSUES AND CONCLUSIONS IN RELATION TO FORMULATING A FRAMEWORK FOR THE RESOLUTION OF FSPs UNDER THE IBC

A brief overview of the key issues discussed, and the conclusions arrived at by the Sub-Committee is set out below.

Scope of Section 227

Section 227 of the IBC provides that '*notwithstanding anything to the contrary examined in the IBC or any other law for the time being in force*', the Central Government may, if it considers necessary, notify FSPs or categories of FSPs for the purpose of their insolvency and liquidation proceedings, which may be conducted under the IBC, '*in such manner as may be prescribed*'. Section 239 (zk) clarifies that the Central Government's rule making powers in relation to section 227 relate to "*the manner of conducting insolvency and liquidation proceedings....*"

Section 227 enables the Central Government to notify FSPs or categories of FSPs for their insolvency resolution and liquidation proceedings under the IBC. The Sub-Committee deliberated that while the Parliament in its wisdom has empowered the Central Government to use the IBC for the insolvency resolution and liquidation of certain FSPs / categories of FSPs, it has recognised the need for application of the IBC process in a different manner, given the peculiar nature of FSPs (both in terms of the nature of business and the manner in which they are regulated). While the non-obstante language in section 227 may be broad enough to empower the Central Government to make rules with appropriate modifications to the IBC process (as long as its basic features are not changed), it may be ideal to issue a Removal of Difficulties (**RoD**) order under section 242 to make it more explicit. Accordingly, the Sub-Committee recommends that a RoD may be issued to empower the Central Government to prescribe a framework with necessary modifications to the IBC without disturbing its basic features. Alternatively, or subsequent to the issuance of the RoD, an amendment to section 227 may also be considered along the same lines in the interest of legal certainty in the long run.

Enabling Framework

Till the time a comprehensive framework (akin to the FRDI Bill) for dealing with the insolvency resolution and liquidation proceedings of FSPs is put in place, applying section 227 appropriately will serve to address the following: (i) issues that the financial sector is presently grappling with on account of the non-availability of an effective mechanism for the resolution of such FSPs; and (ii) avoidance of ad-hoc and yet unavoidable case-by-case resolution approaches to deal with emergency situations in times of financial distress. While certain FSPs like banks and insurance companies can never be resolved under the IBC, some FSPs, including NBFCs, may potentially be effectively resolved under the IBC process with appropriate modifications. Some other FSPs such as merchant bankers, credit rating agencies, web aggregators, etc. can be resolved under the regular IBC process without any modification.

Alternative Approaches

The following approaches were considered and deliberated upon for implementing a framework for the resolution of FSPs under the IBC: (i) amendment of section 227 of the IBC to expressly enable modifications to the provisions relating to insolvency resolution and liquidation proceedings under the IBC for their application to FSPs; (ii) prescribe rules under section 227 of the IBC with appropriate and limited modifications to the existing provisions relating to insolvency resolution and liquidation proceedings for their application to FSPs; and (iii) prescribe rules under section 227 of the IBC with appropriate modifications after issuance of a removal of difficulties

order under section 242 of the IBC to modify section 227 of the IBC so as to expressly enable such modifications.¹⁶ Further, the nature and extent of departures from the existing framework was discussed, including but not limited to the following: meaning of default, role of the appropriate financial sector regulator(s) at various stages of the resolution and liquidation proceedings, performance of duties of insolvency professionals, protection of third party assets and consumer funds etc., which are discussed below.

ILC's Recommendations

The ILC in its meeting held on August 29, 2019 recommended that the Sub-Committee should consider developing a generic enabling framework which may be utilised for the insolvency resolution of FSPs. It also recommended that the enabling framework should be drafted in a manner that it serves as a model framework that may be used for any FSP whenever required. In other words, the rules prescribed under section 227 need not mention the specific FSPs or categories of FSPs that they would apply to. The Central Government may notify them in consultation with the appropriate financial sector regulators separately on a case by case basis. In practice, this will provide financial sector regulators sufficient flexibility to use the IBC as and when required.

Categorisation of FSPs

Given the distinct nature of FSPs, and the fact that certain FSPs can never be resolved under the IBC, the Sub-Committee deliberated on the need for categorising FSPs into three categories: (i) FSPs to which the resolution and liquidation process as set out under the IBC will apply without any modifications, that is, the IBC process will apply as it is; (ii) FSPs to which the resolution and liquidation process as set out under the IBC will apply with appropriate modifications, that is, IBC process will apply with modifications; and (iii) FSPs to which the IBC will not apply. A provisional classification of FSPs into three categories (as mentioned above) for the purpose of the applicability of the IBC, as discussed during the Sub-Committee meetings is at Annexure V for reference. It is clarified that at this stage, the classification of FSPs under Annexure V is very tentative and the financial sector regulators¹⁷, who participated in the Sub-Committee's deliberations, reserved their right to re-categorise them at the time of the relevant notification under section 227. In light of the recommendations made by the ILC, the Sub-Committee decided that the rules prescribed under section 227 need not specify the FSPs or the categories of FSPs that the IBC will apply to and that it may be left open to the appropriate financial sector regulators to use the IBC for any FSP or categories of FSPs, as and when required.

Summary of Conclusions

Based on the above, the Sub-Committee arrived at the following conclusions in relation to formulating a framework for the resolution of FSPs under the IBC:

1. In the absence of a dedicated framework for the resolution of FSPs, and in light of recent instances demonstrative of the crisis in the financial services sector, there is a need to provide an enabling framework under section 227 of the IBC for the resolution of such entities.

¹⁶ Section 242(1) of the IBC provides that if any difficulty arises in giving effect to the provisions of the IBC, the Central Government may make such provisions as may appear to be necessary for removing the difficulty.

¹⁷ The PFRDA submitted that this would be decided after consultation with Department of Financial Services.

2. The scope of section 227 is wide. It enables the Central Government to notify FSPs in consultation with the appropriate financial sector regulator(s) by prescribing rules under section 227 so as to apply the IBC as it is or with essential modifications.¹⁸
3. Issuance of a RoD modifying section 227 to explicitly enable modifications to the existing resolution and liquidation process under the IBC would be ideal. This would make the framework more facilitative and less prone to litigation.
4. Amending section 227 to expressly enable modifications to the provisions relating to insolvency resolution and liquidation proceedings under the IBC for their application to FSPs will make the framework even more legally secure and sustainable. This may be considered as an alternative to the issuance of a RoD or even after its issuance.
5. The proposed framework should be designed such that it does not alter the basic features of the IBC and undermine its primary objectives.
6. It is for the appropriate financial sector regulator to decide whether to use the proposed framework for an FSP or category of FSPs, and if so, when to use it.

Dr. Saksena, however, emphasised that resolution of FSPs with systemic links to the financial system should be in accordance with the 'Key Attributes of Effective Resolution Regimes for Financial Institutions' (**Key Attributes**) of the Financial Stability Board, an international body, which monitors and makes recommendations about the global financial system. Among other recommendations, the Key Attributes provide that resolution regimes for "systemically significant or critical" financial institutions must be led by a resolution authority and provide for *ex ante* features such as resolution and recovery planning.¹⁹ He noted that the Key Attributes cannot be incorporated under the IBC without altering its core features.

Ms. Vadera was of the view that enactment of FRDI Bill with suitable modifications is the only viable option for resolution of systemically important and / or deposit taking FSPs. The views of Ms. Vadera received by email at 05.49 PM on 04.10.2019 is at Annexure VII.

¹⁸ The Sub-Committee noted that in addition to notifying FSPs or categories of FSPs under section 227, the Central Government is empowered to notify the following in consultation in financial sector regulators: (i) transactions to which the moratorium under sections 14(1) and 33(5) shall not apply (under sections 14(3) and 33(6), respectively), (ii) assets which the resolution professional cannot take custody of during the resolution process (explanation to section 18), and (iii) assets which are to be excluded from the purview of the liquidation estate (under section 36(4)(a)(iv)). Although no recommendations are being made in relation to these provisions at this stage, the Central Government may utilize them in consultation with the financial sector regulators in combination with the proposed framework, if required.

¹⁹ Key Attributes of Effective Resolution Regimes for Financial Institutions, Financial Stability Board, October 15, 2014, available at https://www.fsb.org/wp-content/uploads/r_141015.pdf.

PART III

FRAMEWORK FOR INSOLVENCY RESOLUTION AND LIQUIDATION PROCEEDINGS OF FSPs UNDER THE IBC

Based on the issues deliberated upon in the meetings of the Sub-Committee, a set of rules titled the 'Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019' (**Rules**) have been drafted (Annexure IV). These Rules provide the enabling framework for the insolvency resolution and liquidation proceedings of FSPs under the IBC.

FRAMEWORK FOR FACILITATING THE RESOLUTION OF FSPs

In light of the critical services provided by many FSPs and the impact that their failure can have on the economy, resolution frameworks, particularly for certain kinds of FSPs, such as NBFCs and HFCs, assume great significance. As per the latest financial stability report of the RBI released on June 27, 2019 (**FSR**)²⁰, NBFCs are the largest net borrowers of funds from the financial system with gross payables of around INR 8,446 billion and gross receivables of around INR 723 billion as at March-end 2019. The highest funds have been received from scheduled commercial banks, followed by AMC-MFs and insurance companies. The FSR further notes that NBFCs depend largely on public funds which account for seventy percent of the total liabilities of the sector. Bank borrowings, debentures and commercial papers are the major sources of funding for NBFCs.

Further, HFCs were the second largest borrowers of funds from the financial system with gross payables of around INR 5,884 billion and gross receivables of only INR 430 billion as at March-end 2019. The borrowing pattern of HFCs was similar to NBFCs except that all India Financial Institutions (NABARD, EXIM, NHB and SIDBI) also played a significant role. As in the case of NBFCs, long term debt, long term loans and commercial papers were the top three instruments through which HFCs raised funds.

While examining the recent liquidity crunch in the NBFC sector, a market analyst notes the following²¹:

"NBFCs are increasingly finding it hard to access funding. The reason for this is not hard to find. Unlike banks, NBFCs credit growth has been fueled largely by borrowings from the banks and from the capital and money markets. In particular, NBFCs were accessing half of their funding from the mutual funds by issuing Commercial Papers (CPs) and Certificates of Deposits (CDs). Between FY14 and FY18, the share of CPs within the borrowing mix doubled for NBFCs while it tripled for HFCs. Due to relatively lower costs, the sharp rise in share of CP borrowings had a positive effect on the cost of funds and margins for NBFCs. However, it increased vulnerability to asset liability mismatches (ALM; this refers to the fact that these lenders have short dated borrowings and long-dated assets)."

²⁰ Financial Stability Report, Issue No. 19, Reserve Bank of India, June, 2019, 53-55, available at <https://rbidocs.rbi.org.in/rdocs//PublicationReport/Pdfs/FSRJUNE2019E5ECDDAD7E514756AEF1E71CB2ADA2B.PDF>.

²¹ Saurabh Mukherjea, 'The RBI can Reverse the NBFC Crisis', Fortune India, August 2, 2019, available at <https://www.fortuneindia.com/opinion/the-rbi-can-reverse-the-nbfc-crisis/103490>.

Pursuant to a contagion analysis of NBFCs and HFCs in the FSR, the RBI has highlighted that solvency contagion losses to the banking system due to idiosyncratic HFC/NBFC failure show that the failure of the largest of these entities can cause losses comparable to those caused by the big banks, underscoring the need for greater surveillance over large HFCs/NBFCs. Relevant extracts from the FSR are set out below²²:

“NBFCs and HFCs are among the largest borrowers of funds from the financial system. A substantial part of this funding comes from banks. Therefore, failure of any NBFC or HFC will act as a solvency shock to its lenders. The solvency losses caused by these shocks can further spread by contagion.

We assess the quantum of solvency contagion losses to the banking system caused by the idiosyncratic failure of a stand-alone NBFC/ HFC. The results are presented in Tables 2.25 and 2.26. Failure of the HFC with the maximum capacity to cause solvency losses to the banking system (labelled as HFC 1) will lead to a loss of 5.8 percent of the total Tier 1 capital of the banking system and a failure of one bank. Failure of the NBFC with the maximum capacity to cause solvency losses to the banking system (labelled as NBFC 1) will lead to a loss of 2.7 percent of total Tier 1 capital and a failure of one bank.”

In light of the factors mentioned above and the possibility of a contagion effect in case of failure of NBFCs and HFCs, the resolution framework for such entities needs to be re-evaluated. As highlighted earlier, currently, India does not have a specialized and consolidated resolution framework for FSPs. Recently, the Finance (No. 2) Act, 2019 has conferred certain additional resolution powers on the RBI in relation to NBFCs by amending the Reserve Bank of India Act, 1934. Such powers include: (i) removal of directors of NBFCs on grounds of public interest, to prevent the affairs from being conducted in a manner detrimental to the interests of depositors or creditors, in the interest of financial stability or for securing proper management; (ii) supersession of the board of directors on the grounds specified in (i) and appointment of an administrator for a specified period; and (iii) framing schemes which may provide for amalgamation, enabling creation of a bridge institution for transferring the viable part of the business to it, reconstruction of the NBFC, etc. These schemes may be prepared in public interest, in the interest of financial stability or enabling the continuance of the activities if it is critical to the functioning of the financial system.

The Finance (No. 2) Act, 2019 has also amended the National Housing Bank Act, 1987 and conferred certain powers for regulation of HFCs with the RBI. After reviewing the regulatory framework applicable to HFCs, the RBI will issue revised regulations in due course.²³ Till the RBI issues a revised framework, HFCs must comply with the directions and instructions issued by the National Housing Bank.²⁴

While the recent amendments might help the RBI in resolving at least some FSPs under distress, the resolution framework for FSPs in general remains uncomprehensive, with disparate powers conferred on various financial sector regulators across several statutes. Even the recent amendments to the Reserve Bank of India Act, 1934 remain untested. Further, post enactment of the IBC, an event of default is no longer a ground for filing an application for winding up under the Companies Act, 2013. Consequently, the stakeholders of FSPs are left with no effective remedy against a defaulting FSP.

²² Ibid 19, 57-58.

²³ Press Release 2019-2020/419, Transfer of Regulation of Housing Finance Companies (HFCs) to Reserve Bank of India, Reserve Bank of India, August 13, 2019.

²⁴ Ibid.

Comparatively, the resolution framework for non-FSPs under the IBC is working reasonably well. Since the Parliament in its wisdom has provided the flexibility for the IBC to be used for insolvency resolution of FSPs and even the FRDI Bill had envisaged the application of the IBC to certain categories of FSPs while formulating a dedicated framework for resolution of FSPs, there is a clear case for allowing some FSPs to be resolved under the IBC to the extent possible, as under:

1. Where the business and regulation of an FSP is not different from that of a corporate debtor currently being resolved under the IBC, the FSP should be resolved under the normal process of the IBC;
2. Where the business and regulation of an FSP is fairly different from that of a corporate debtor currently being resolved under the IBC, the FSP should be resolved under the IBC with appropriate modifications; and
3. Where the business and regulations of an FSP is substantially different from that of a corporate debtor currently being resolved under the IBC, the FSP may be not resolved under the IBC.

The Sub-Committee hereby recommends as an interim arrangement, an enabling framework with appropriate modifications to the IBC, which would allow the Central Government and the appropriate financial sector regulators to use the IBC process for some FSPs / categories of FSPs, where the business and regulation of the FSP is fairly different from that of a corporate debtor currently being resolved under the IBC, as and when required. The key features of the proposed framework are discussed below.

A SYNOPSIS OF THE PROPOSED FRAMEWORK

The Rules consist of three parts. Part A lays down the applicability provision and definitions. Part B prescribes the insolvency resolution, liquidation and voluntary liquidation processes, as applicable to FSPs or categories of FSPs. Part C sets out the process to be followed for application to the adjudicating authority.

The framework for the insolvency resolution and liquidation proceedings of FSPs, as prescribed in the Rules, is based on the following underlying principles:

1. Having an effective framework for resolution of FSPs that provides legal certainty to the stakeholders is important for ensuring stability in the financial system.
2. Given the distinct nature of services provided by many FSPs, the role of financial sector regulators at critical stages of resolution processes assumes significance. Accordingly, it is crucial that the framework enables financial sector regulators to play an important role in the administration of the proceedings in the interest of regulatory certainty and protection of all stakeholders.

Broadly, and in light of the above, the primary features of the framework are as follows:

1. The framework, as prescribed in the Rules, will only apply to those FSPs which are notified by the Central Government in consultation with the appropriate financial sector regulator(s) (**appropriate regulator**). This will be an interim arrangement pending provision of a specialised framework for FSPs.
2. An administrator will be selected from a panel of administrators notified by the Central Government in consultation with the appropriate regulator. Only such an administrator will be eligible to be appointed and perform the duties and functions of an interim resolution professional, resolution professional or a liquidator during the insolvency resolution and liquidation proceedings of an FSP.
3. Before the adjudicating authority passes an order for admission of applications for resolution, approval of resolution plan, liquidation, dissolution or voluntary liquidation, the

appropriate regulator must be given an opportunity of being heard. As regards the extent of involvement of appropriate regulator in the insolvency and liquidation proceedings of FSPs, the members of the Sub-Committee had differing views, as explained elsewhere in this Report.

KEY ELEMENTS OF THE PROPOSED FRAMEWORK

As stated earlier, the IBC provides a consolidated framework for the reorganization, insolvency resolution and liquidation of corporate persons in a time-bound manner. Accordingly, and keeping in mind the spirit of section 227, the resolution and liquidation framework prescribed under the proposed Rules modify the IBC process only to the extent necessary, without altering its fundamental characteristics. The Rules do not propose to alter the basic features of the IBC, such as: (i) what constitutes a default; (ii) time-limit for completion of insolvency resolution process; (iii) duties of interim resolution professionals, resolution professionals or liquidators; (iv) the composition and role of the committee of creditors, etc.

Though the IBC is a comprehensive framework for the insolvency resolution and liquidation of corporate persons, there are certain issues that are peculiar to the manner in which FSPs operate, which are not addressed by the IBC. In order to bridge this gap, certain modifications to the processes under the IBC have been proposed. Key elements of the proposed Rules are set out below.

Applicability

1. The framework will apply only to those FSPs or categories of FSPs which are notified by the Central Government, in consultation with the appropriate regulator, from time to time, in accordance with section 227 of the IBC. Such notification will also specify the appropriate regulator for the FSP or category of FSP, as the case may be.

As recommended by the ILC, the Rules prescribed under section 227 of the IBC need not mention the specific FSPs or categories of FSPs that they would apply to. The Central Government may notify them in consultation with the appropriate regulators separately on a case by case basis. In practice, this will provide financial sector regulators sufficient flexibility to use the IBC when required. Further, pre-determining the appropriate regulator for an FSP or a category of FSP by specifying it in the notification under section 227 of the IBC will serve to preclude procedural delays at the admission stage, especially in cases where there might be more than one financial sector regulator for an FSP or a category of FSPs. The appropriate regulator, where FSPs are regulated by multiple regulators, should be identified through consultations with the regulators before a notification under section 227 is issued.

Insolvency Resolution

2. The appropriate regulator may file an application to initiate the insolvency resolution process against an FSP on the occurrence of default. Such an application will be dealt with in the same manner as an application filed by a financial creditor against a corporate debtor under section 7 of the IBC.

Given that most FSPs are regulated under specific regulatory frameworks which typically empower the appropriate regulators to have a say (through conditions of license or regulations) in several aspects of their business and call for a broad range of information as may be required, it may be appropriate to empower such financial sector regulators to initiate the resolution process in addition to the applicants currently recognized under the IBC. This approach is also in line with other existing statutes dealing with the insolvency of FSPs. For instance, under the Reserve Bank

of India Act, 1934, the RBI is empowered to initiate winding up proceedings against NBFCs on various grounds, including inability to pay debts.²⁵ One financial sector regulator expressed hesitation with respect to initiating the resolution process on occurrence of default. After detailed deliberation, the Sub-Committee favoured empowering the regulator concerned to initiate the resolution process on occurrence of default. This is an enabling provision only and it would be open to the appropriate regulator to use it or not.

Another regulator submitted that the framework should enable the appropriate regulator to initiate the insolvency resolution process against an FSP even prior to the occurrence of default (as defined in the IBC) as the appropriate regulator is in a position to ascertain distress in an FSP even before it meets the threshold for default under the IBC (given the nature of business of FSPs and the manner in which they are regulated). After deliberations, the Sub-Committee felt that this would entail a significant departure from one of the core features of the IBC and hence the trigger event for initiation of the resolution process should not be altered. The initiation of resolution processes at stages prior to default may be dealt with by the appropriate regulators outside the proposed framework in accordance with their respective regulatory frameworks.

3. It will be mandatory for an applicant filing an application under sections 7, 9 or 10 of the IBC against an FSP to give a notice in writing to the appropriate regulator at least fourteen days before submitting such an application.
4. Before admitting any application under sections 7, 9 or 10 of the IBC against an FSP, the adjudicating authority may provide the appropriate regulator an opportunity of being heard.

In the event an application is filed by a financial creditor, operational creditor or the FSP itself, requiring that the appropriate regulator be kept informed and heard before admission or rejection of the case, will enable the appropriate regulator to make appropriate submissions in the interest of effective resolution and financial stability. For instance, in an application filed by the operational creditor, if the appropriate regulator submits that the FSP in question will be better resolved under an out-of-court mechanism under the appropriate regulator's supervision, the adjudicating authority, if convinced, may not admit the case. Some financial sector regulators did not support their involvement (receiving a copy of application or having an opportunity of hearing) at the stage of admission of application. The Sub-Committee was evenly divided on this issue.

5. Only an administrator from the list of administrators notified by the Central Government in consultation with the appropriate regulator (identified by the appropriate regulator) for an FSP or a category of FSPs shall be eligible to be appointed as the insolvency professional, interim resolution professional, resolution professional or liquidator for the resolution process and liquidation proceedings, as the case may be, for the purpose of the resolution or liquidation of an FSP.
6. The administrator shall have the same rights, obligations and powers, and shall perform the same duties and functions as those of the insolvency professional, interim resolution professional, resolution professional or liquidator, in relation to the resolution and liquidation proceedings of FSPs.

Given the special nature of FSPs (especially large ones, which are systemically linked to the financial sector), most jurisdictions recognise special resolution authorities for administering their resolution processes. Such authorities are typically vested with broad powers of resolution and

²⁵ Section 45MC, Reserve Bank of India Act, 1934.

are empowered to act swiftly in the interest of financial stability. The FRDI Bill also adopted this approach and vested such powers in an authority called the 'Resolution Corporation'. While recognising such an authority under the Rules may not be possible without disturbing the core features of the IBC, the appropriate regulators need to be empowered to identify administrators who may be appointed for performing the functions of an insolvency professional under the IBC. This will serve the following purposes: (i) the appropriate regulator will retain the flexibility to have its choice of administrators for running the process who have the necessary expertise for carrying out such resolutions; and (ii) the process will benefit from the appropriate regulator's indirect oversight through such administrators. Nevertheless, such administrators will also have to comply with all requirements of the IBC and applicable regulations (as applicable to insolvency professionals) to ensure compliance with this core feature of the IBC.

7. A prospective resolution applicant must obtain a 'no objection' from the appropriate regulator to the effect that it has no objection to the persons, who would be controlling and or managing the affairs of the FSP, post resolution. If the appropriate regulator does not refuse the 'no objection' within 30 days of receiving request, the no objection shall be deemed to have been granted.

The Sub-Committee noted the provisions under the Code enabling prospective resolution applicants to seek advance clearance from the Competition Commission of India. After detailed deliberations, it held the view that the framework should require the resolution applicant to obtain a no objection from the appropriate regulator (which should be provided within thirty days of receiving an application in this regard) before it submits a resolution plan to the resolution professional. This will ensure that only such resolution applicants, who in the assessment of the appropriate regulator are eligible to engage in the business of financial service of the FSP in question, submit resolution plans. Thereafter, once the committee of creditors approves a resolution plan, a copy of the same will be sent to the appropriate regulator, who will have an opportunity of being heard by the adjudicating authority before it approves the plan.

Further, one regulator held the view that only existing FSPs should be allowed to be resolution applicants, as they would have already been screened by the regulator. The Sub-Committee, however, felt that such a provision would unduly restrict competition and limit value maximisation.

On the question of involvement of the appropriate regulator at other stages of the proceedings, the Sub-Committee noted that unlike in the case of a non-financial firm where the creditors are considered to be primary stakeholders, the resolution of an FSP will have to take into consideration the protection of consumers (if applicable), financial stability and ensure compliance with certain regulatory requirements. An appropriate regulator may be better placed to assess such issues in comparison to the committee of creditors. Accordingly, the Sub-Committee considered whether the administrator should keep the appropriate regulator informed about the schedule and agenda for all meetings of the committee of creditors and the appropriate regulator should have the flexibility to attend such meetings and provide its views.

The Sub-Committee also noted that the interim resolution professional or the resolution professional files a variety of applications with the adjudicating authority, such as, applications for directions to the personnel of an FSP to extend co-operation to the interim resolution professional or the resolution professional, submitting status reports regarding the resolution process, seeking avoidance of preferential transactions or undervalued transactions, etc. It considered if a copy of such applications needs to be delivered to the appropriate regulator in the interest of regulatory certainty and protection of all stakeholders, if required. The financial sector regulators were generally against their involvement in meetings of the CoC and applications to the adjudicating

authority. After detailed deliberations, the Sub-Committee concluded that in such matters, involvement of the regulators may not be required.

8. The resolution plan shall include a statement explaining the manner in which the resolution applicant satisfies or intends to satisfy the requirements of engaging in the business of the FSP as per applicable laws.

This provision will ensure that only those applicants submit resolution plans who fulfill the minimum eligibility criteria under and are in compliance with applicable laws relating to the business of the FSP. Further, given that FSPs are subject to several regulatory requirements due to the nature of their business, this provision will help in alleviating concerns relating to uncertainty on regulatory issues and ensure that the plans are viable from a regulatory perspective.

9. The resolution professional shall provide a copy of the resolution plan approved by the committee of creditors to the appropriate regulator before submitting the same to the adjudicating authority to enable the appropriate regulator to submit its views, if any, to the adjudicating authority.
10. During the insolvency resolution process, the license or registration which authorizes an FSP to engage in the business of providing financial services shall not be terminated.

Typically, FSPs are authorized to engage in the business of providing financial services through licenses or registrations granted to them to undertake their businesses by the appropriate regulators. The cancellation or termination of such licenses during the insolvency process may erode the value proposition of the entity and deter prospective resolution applicants from submitting resolution plans. Accordingly, this provision will ensure that the license or registration which authorizes an FSP to undertake its business is not terminated during the process so that it can be resolved effectively.

11. Where the appropriate regulator files an application for initiating the resolution process against an FSP, the provisions of moratorium under section 14 of the IBC will apply from the date on which such application is filed.

The key assets of most FSPs include properties which can be easily transferred. For instance, for NBFCs in the business of lending, their primary assets are the loans and their associated receivables. In the absence of an interim moratorium, such assets can be easily transferred to third parties before a case is admitted. This can completely undermine the process (as without such assets, it may not be possible to resolve such FSPs at all).

Liquidation and Voluntary Liquidation Proceedings

12. Only an administrator will be eligible to be appointed as the liquidator for the purpose of liquidation or voluntary liquidation proceedings of FSPs.

This provision will serve the following purposes: (i) the appropriate regulator will retain the flexibility to appoint administrators who have the necessary expertise for carrying out such proceedings; and (ii) the proceedings will benefit from the appropriate regulator's indirect oversight through such administrators. Nevertheless, such administrators will also have to comply with all requirements of the IBC and applicable regulations (as applicable to liquidators) to ensure compliance with this core feature of the IBC.

13. The adjudicating authority shall provide the appropriate regulator an opportunity of being heard before passing an order for: (i) liquidation of an FSP under section 33 of the IBC; (ii) dissolution of an FSP under section 54 of the IBC; and (iii) dissolution of an FSP under section 59 of the IBC.

In many jurisdictions, the liquidation process of FSPs is carried out by special authorities. Even the FRDI Bill proposed to empower the 'Resolution Corporation' to carry out the liquidation process. In the absence of a special resolution authority under the IBC, these provisions will ensure that the appropriate regulator has sufficient involvement in the liquidation process and that necessary interventions are made in the interest of financial stability, as may be required.

The Sub-Committee considered the need for the liquidator to provide a copy of all applications filed and received by it in respect of the liquidation proceedings to the appropriate regulator, at the time of filing the same with the adjudicating authority to enable the appropriate regulator to make necessary interventions in the interest of regulatory certainty and protection of all stakeholders, if required. After detailed discussions, the Sub-Committee concluded that in such matters, involvement of regulator may not be required.

14. In liquidation proceedings, the license or registration which authorizes an FSP to engage in the business of providing financial services shall not be terminated without providing the liquidator an opportunity of being heard.

This provision is important in that even in liquidation proceedings, in situations where the sale of an FSP as a going concern or the sale of its business as a going concern is being contemplated, it is crucial that such an FSP's value proposition is preserved. Accordingly, the license or registration authorizing an FSP to engage in the business of providing financial services must not be terminated without informing the liquidator and giving her an opportunity of being heard, as such cancellation may undermine the liquidator's attempts in relation to the sale of an FSP as a going concern or its business as a going concern.

15. An FSP has to obtain prior permission from the appropriate regulator before initiating voluntary liquidation proceedings under section 59 of the IBC.

This provision is important as it will ensure that the appropriate regulator is kept adequately informed about the initiation of voluntary liquidation proceedings and that necessary interventions are made in the interest of regulatory certainty and protection of stakeholders.

Treatment of Third-Party Assets

16. The treatment of any third-party assets in the custody of an FSP, including any funds, securities or other assets held in trust for the benefit of third parties, will be dealt with in accordance with the notification issued by the Central Government in consultation with the appropriate regulator under section 227. The provisions of moratorium (both, the interim moratorium under the proposed framework and the regular moratorium under section 14) as applicable, will not apply to any third-party assets.

Under the IBC, third-party assets are excluded from the meaning of 'assets' of the corporate debtor that the interim resolution professional or the resolution professional must take custody and control of during the resolution process (under section 18), as well as from the meaning of 'liquidation estate' (under section 36(4)). However, since managing the assets of third parties is part of business of FSPs, the administrator shall take control and custody of such assets and deal

with them in accordance with the notification issued under section 227. It however needs to be clarified that the moratorium provisions shall not apply to third-party assets in the interest of adequately protecting the concerned stakeholders.

Further, given that several FSPs hold third-party assets, including funds and securities in trust for the benefit of third parties which are subject to several regulatory requirements, such assets must be dealt with in the manner as may be specified in the notification under section 227 by the Central government, in consultation with the appropriate regulator.

One financial sector regulator held the view that third-party assets or properties in custody or possession of the FSP may be dealt with in accordance with the regulations, orders and directions issued by the regulator to take care of case specific eventualities. The Sub-Committee felt that in the interest of transparency and predictability, any treatment of third-party assets should be known to the stakeholders upfront and the draft notification under section 227 (Annexure II), accordingly, provides for the same. It may not be left to orders or directions on a case-by-case basis.

17. Any liability on the balance sheet of an FSP, other than a liability in respect of its share capital, will be considered as a financial debt or an operational debt, as the case may be.

The clarification in relation to any liability on the balance sheet of an FSP (other than liability in respect of its share capital) being considered as a financial debt or an operational debt has been provided out of abundant caution and in order to avoid confusion with respect to what constitutes debt and what constitutes third-party assets for an FSP. With respect to amounts deposited by depositors with an FSP, such amounts will be treated as financial debt and such depositors will be classified as financial creditors and will be treated accordingly. In cases where there are a large number of depositors, the provisions of section 21(6A) will apply and they will be represented accordingly.

One of the financial sector regulators suggested that a third category of regulatory dues may be introduced in addition to financial debt and operational debt, as such dues do not fall either under financial debt or operational debt. The Sub-Committee felt that this may not serve any useful purpose, as the Code confers rights and obligations only on financial and operational creditors.

Involvement of Financial Regulator

In the proposed framework, the appropriate financial regulator shall:

- a. provide name of the FSP and / or the categories of FSPs to be resolved under the regular process of the IBC for notification under section 227;
- b. provide name of the FSP and / or category of FSPs to be resolved under the IBC process with modifications for notification under section 227;
- c. provide a list of administrators for each FSP and / or category of FSPs, who would act as insolvency professionals in resolution and liquidation proceedings, for notification under section 227;
- d. provide the manner of dealing with third party assets of each category of FSPs, for notification under section 227;
- e. have the right to file an application for initiation of insolvency resolution of an FSP;
- f. be provided with a copy of applications filed under sections 7, 9 or 10 of the IBC against an FSP;
- g. have an opportunity of being heard by the adjudicating authority before it passes an order for admission of applications for resolution, approval of resolution plan, liquidation, dissolution or voluntary liquidation;

- h. shall issue 'no objection' within 30 days of receipt of request from a prospective resolution applicant to the effect that it has no objection to the persons, who would be controlling and managing affairs of the FSP, post resolution;
- i. shall not terminate the registration or authorization which allows an FSP to engage in the business of providing financial services during the resolution process; and
- j. shall not terminate the registration or authorization which allows an FSP to engage in the business of providing financial services during the liquidation process unless an opportunity of being heard has been provided to the liquidator.

ANNEXURE I

No. 30/04/2017-Insolvency Section
Government of India
Ministry of Corporate Affairs

5th Floor, A wing
Shastri Bhawan, New Delhi
Dated: 16.08.2019

Order

Subject: - Constitution of Sub-Committee of Insolvency Law Committee for
Notification of Financial Service Providers (FSPs) under Section 227

Section 227 of Part V (Miscellaneous) of Insolvency and Bankruptcy Code, 2016 (Code) mandates for notification of financial service providers (FSPs) or categories of financial service providers by the Central Govt. for the purpose of their insolvency and liquidation proceedings, which may be conducted under the Code. In this regard, consultation has been done by this ministry with financial regulators for notifying such FSPs and views of these financial regulators were shared with the Department of Economic Affairs (DEA) and Insolvency & Bankruptcy Board of India (IBBI).

DEA has suggested the division of various FSPs between proposed Financial Resolution and Deposit Insurance Bill, 2016 (FRDI) & Code based on the criteria of non-involvement/tendering of public funds to the FSPs by Public, critical value of the FSPs and the capacity of consumers to access and process information relating to the safety and soundness of the class of FSPs etc and provided a comprehensive list of FSPs to this ministry.

2. In view of above, it has been decided to refer the matter to a sub-committee of Insolvency Law comprising (ILC) for examining it further and to give its recommendations to this ministry on following terms of reference:

- i. The financial service providers or categories of financial service providers that can be notified under section 227 of the code for the purpose of their insolvency and liquidation proceedings based on the inputs received from Department of Economic Affairs (DEA) and other financial regulators, keeping the due consideration for the FSPs to be covered under the proposed FRDI Bill so as to rule out any regulatory gap or overlap to cover all FSPs,
- ii. The regulatory framework that may be required for dealing with such FSPs,
- iii. In light of current financial stress in certain NBFCs and HFCs, the possibility of covering them under specific framework duly factoring the recent amendments done in the Reserve Bank of India Act, 1934, by Finance Act, 2019

4. Accordingly a sub-committee of Insolvency Law Committee is constituted as under:-

- (i) Dr M.S.Sahoo, Chairperson IBBI & Member, ILC : Chairman
- (ii) Dr Shashank Saxena, Adviser, DEA, Ex-officio Member, IBBI : Member
- (iii) Sh Behram Vakil, Partner ABZ & Partners, Member, ILC : Member
- (iv) Sh Sunil Mehta, MD&CEO PNB, President IBA, Member, ILC : Member
- (v) Sh R.B.Verma, Ex-President, National Housing Bank : Member
- (vi) Nominee of Reserve Bank of India not below the rank of ED : Member

Vidhi Centre for Legal policy will provide the legal research assistance to the sub-committee.

5. The Committee may also invite or co-opt practitioners, experts or individuals who have knowledge or experience in the subject matter. The Committee may also consult other stakeholders as part of its deliberations.

6. The non-official members of the Committee shall be eligible for travelling, conveyance and other allowances as per extant government instructions, wherever the sponsoring agency is unable to bear their expenditure. Secretarial support to the Committee will be arranged by Insolvency and Bankruptcy Board of India.

7. The Committee shall submit its recommendations within two weeks from its first meeting.

8. This issues with the approval of Secretary, Corporate Affairs.


(Rakesh Tyagi)
Director

To

All members

Copy to:-

- i. PS to CAM
- ii. PS to MOS for CA
- iii. Sr. PPS to Secretary, MCA
- iv. Governor, Reserve Bank of India with a request to nominate an officer not below the rank of Executive Director as member of the Committee
- v. PS to AS
- vi. PS to JS(G)
- vii. Vidhi Centre for Legal Policy

ANNEXURE II
[TO BE PUBLISHED IN THE GAZETTE OF INDIA]
MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION

New Delhi, the ___th October, 2019

G.S.R. [...].— In exercise of the powers conferred by section 227 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government in consultation with the [write the name of Regulator(s) here] hereby notifies as under:

(1) The insolvency resolution and liquidation proceedings of the following financial service providers / categories of financial service providers shall be undertaken in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and the applicable Regulations:

Sl. No.	Financial Service Providers / Categories of Financial Service Providers
1	
2	
3	
4	

(2) The insolvency resolution and liquidation proceedings of the following financial service providers / categories of financial service providers shall be undertaken in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (hereafter 'Rules') and the applicable Regulations:

Sl. No.	Financial Service Provider / Category of Financial Service Provider (Rule 2 of the Rules)	Appropriate Regulator (clause (a) of sub-rule (1) of Rule 3 of the Rules))	Administrator (clause (b) of sub-rule (1) of Rule 3 of the Rules))	Treatment of third-party assets (clause (a) of Rule 8 of the Rules))
(1)	(2)	(3)	(4)	(5)
1			a. b. c.	Schedule No.
2			a. b. c.	Schedule No.
3			a. b. c.	Schedule No.
4			a. b. c.	Schedule No.

ANNEXURE III
TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,
PART II, SECTION 3, SUB SECTION (ii)
Government of India
Ministry of Corporate Affairs

New Delhi, the _____ September, 2019
ORDER

S.O.(E).- Whereas, section 227 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) (hereinafter referred to as the Code) empowers the Central Government, in consultation with the appropriate financial sector regulators, to notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings, which may be conducted under the Code, in such manner as may be prescribed

And whereas, some financial service providers are facing financial distress and there is no effective mechanism in place for insolvency resolution and liquidation of financial service providers,

And whereas, nature of business of the financial service providers are different from other corporate debtors and their business is regulated by the financial sector regulators;

And whereas, insolvency resolution and liquidation framework provided in the Code for corporate debtors do not meet the requirements of insolvency resolution and liquidation of financial service providers;

And whereas, certain difficulties have arisen in giving effect to the provisions of the Code relating to corporate debtors for insolvency resolution and liquidation of financial service providers;

NOW THEREFORE, in exercise of the powers conferred by sub-section (1) of section 242 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby makes the following Order to remove the above said difficulties, namely: -

- 1. Short title and commencement.** - (1) This Order may be called the Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2019.
(2) This order shall come into force on the ...day of September, 2019.
- 2. In the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in section 227, after the words "conducted under this Code" and before the words "in such manner", the words, "with such modifications of the provisions of the Code and" shall be inserted.**

File No._____

(Name & designation of Issuing Authority)

ANNEXURE IV
[TO BE PUBLISHED IN THE GAZETTE OF INDIA]

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION

New Delhi, the ___th September, 2019

G.S.R. [...]. — In exercise of the powers conferred by section 227, sub-section (1) of section 239 and clauses (c), (d), (e), (f) and (zk) of sub-section (2) of section 239 read with sections 7, 8, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby makes the following rules, namely:-

PART A
PRELIMINARY

1. Short title and commencement.

(1) These rules may be called the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.
(2) They shall come into force from the ___ day of ____, 2019.

2. Application. — (1) These Rules shall apply to financial service providers or categories of financial service providers, as may be notified by the Central Government from time to time in accordance with section 227.

(2) The notification under section 227 shall also specify the appropriate regulator of financial service providers or categories of financial service providers, as the case may be, for the purpose of these Rules.

3. Definitions. —

(1) In these Rules, unless the context otherwise requires: -

- (a) “appropriate regulator” means the financial sector regulator which regulates the business of the financial service provider or one of the financial sector regulators where the financial service provider is regulated by more than one financial sector regulator, as prescribed by the Central Government in the notification in accordance with sub-clause (2) of Rule 2 of these Rules;
- (b) “Administrator” means a person included in the panel of Administrators, as may be notified by the Central Government from time to time, to act as the insolvency professional for a financial service provider or a category(ies) of financial service provider(s) for the purpose of these Rules;
- (c) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
- (d) “credit information company” shall have the meaning as assigned to it under the Credit Information Companies (Regulation) Act, 2005 (30 of 2005);
- (e) “financial contract” means a contract between a financial service provider and a financial creditor setting out the terms of the financial debt, including the tenure of the debt, interest payable and date of repayment;
- (f) “Form” means a form appended to these Rules;
- (g) “identification number” means the limited liability partnership identification number or the corporate identity number, as the case may be, of the financial service provider;
- (h) “schedule I” means schedule I appended to these Rules;
- (i) “schedule II” means schedule II appended to these Rules; and
- (j) “section” means a section of the Code.

(2) Words and expressions used and not defined in these Rules but defined in the Code shall have the meanings respectively assigned to them in the Code.

PART B
INSOLVENCY RESOLUTION AND LIQUIDATION PROCEEDINGS OF FINANCIAL SERVICE PROVIDERS

4. Corporate Insolvency Resolution Process.— The provisions of the Code and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall apply *mutatis mutandis* to the corporate insolvency resolution process of financial service providers with the following modifications, namely:-

- (a) The appropriate regulator may file an application for initiating corporate insolvency resolution process against a financial service provider when a default has occurred.
- (b) An application filed under clause (a) shall be dealt with in the same manner as an application by a financial creditor under section 7.
- (c) The provisions of sub-clauses (a), (b), (c) and (d) of sub-section (1) and sub-sections (2) and (3) of section 14 shall apply from the date of filing of an application under clause (a).
- (d) An applicant under section 7, 9 or 10, as the case may be, shall provide a copy of the application to the appropriate regulator before filing the same with the Adjudicating Authority.
- (e) The Adjudicating Authority shall provide the appropriate regulator an opportunity of being heard before admitting any application under section 7, 9 or 10, as the case may be.
- (f) The license or registration which authorises the financial service provider to engage in the business of providing financial services shall not be terminated during the corporate insolvency resolution process.
- (g) A prospective resolution applicant shall apply to the appropriate regulator seeking a 'no objection' to the effect that it has no objection to persons, who would be in control or management of the financial service provider, post resolution.
- (h) Where an appropriate regulator does not refuse to issue 'no objection' within 30 days of receipt of application under clause (g), it shall be deemed that 'no objection' has been granted.
- (i) The resolution plan shall include: (a) a statement as to how the resolution applicant satisfies or intends to satisfy the requirements of engaging in the business of the financial service provider, as per applicable laws; and (b) a 'no objection' from the appropriate regulator to the effect that it has no objection to persons, who would be in control or management of the financial service provider, post resolution.
- (j) The resolution professional shall provide a copy of the resolution plan as approved by the committee of creditors to the appropriate regulator before submitting it to the Adjudicating Authority.
- (k) The Adjudicating Authority may provide the appropriate regulator an opportunity of being heard before approving a resolution plan under section 31.

5. Liquidation Process.— The provisions of the Code and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 shall apply *mutatis mutandis* to the liquidation process of financial service providers with the following modifications, namely:-

- (a) The license or registration that authorises the financial service provider to engage in the business of providing financial services shall not be terminated during the liquidation process, unless an opportunity of being heard has been provided to the liquidator.

- (b) The Adjudicating Authority shall provide the appropriate regulator an opportunity of being heard before passing an order for-
 - (i) liquidation of the financial service provider under section 33, and
 - (ii) dissolution of the financial service provider under section 54.

6. Voluntary Liquidation Process.— The provisions of the Code and the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 shall apply *mutatis mutandis* to the voluntary liquidation process of financial service providers with the following modifications:

- (a) The financial service provider shall obtain prior permission of the appropriate regulator for initiating voluntary liquidation proceedings under section 59.
- (b) The affidavit referred to in clause (a) of sub-section (3) of section 59 shall include a declaration that the permission under clause (a) has been obtained.
- (c) The Adjudicating Authority shall provide the appropriate regulator an opportunity of being heard before passing an order for dissolution of the financial service provider under section 59.

7. Insolvency Professional.-

- (1) For the purpose of these Rules, only an Administrator shall be eligible to be appointed as an insolvency professional, interim resolution professional, resolution professional or liquidator, as the case may be.
- (2) An Administrator shall have the duties, functions, obligations, responsibilities, rights, and powers of an insolvency professional, interim resolution professional, resolution professional or liquidator, as the case may be, while acting as such in an insolvency resolution and liquidation proceeding of a financial service provider.

8. Assets of third parties, etc.

- (1) The provisions of clause (c) of Rule 4 and section 14 shall not apply to any third-party assets or properties in custody or possession of the financial service provider, including any funds, securities and other assets required to be held in trust for the benefit of third parties.
- (2) The Administrator shall take control and custody of third party assets or properties in custody or possession of the financial service provider, including any funds, securities and other assets required to be held in trust for the benefit of third parties and deal with them in accordance with the notification issued by the Central Government in consultation with the appropriate regulator under section 227.
- (3) Any liability on the balance sheet of the financial service provider, other than a liability in respect of its share capital, shall be considered as an operational debt or a financial debt, as the case may be.

PART C
PROCESS FOR APPLICATION TO ADJUDICATING AUTHORITY

9. Application by financial creditor.—

- (1) A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a financial service provider under section 7 in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (2) The financial creditor shall provide a notice in writing to the appropriate regulator in the manner specified in Schedule II, at least fourteen days before submitting an application under section 7.

- (3) Where the applicant under sub-rule (1) is an assignee or transferee of a financial contract, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer.
- (4) The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the financial service provider.
- (5) In case the application is made jointly by financial creditors, they may nominate one amongst them to act on their behalf.

10. Demand notice by operational creditor.—

- (1) An operational creditor shall deliver to the financial service provider, the following documents, namely:-
 - (a) a demand notice in Form 3; or
 - (b) a copy of an invoice attached with a notice in Form 4.
- (2) The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8, may be delivered to the financial service provider,
 - (a) at the registered office by hand, registered post or speed post with acknowledgement due; or
 - (b) by electronic mail service to a whole-time director or designated partner or key managerial personnel, if any, of the financial service provider.
- (3) A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any.

11. Application by operational creditor.—

- (1) An operational creditor shall make an application for initiating the corporate insolvency resolution process against a financial service provider under section 9 in Form 5, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (2) The operational creditor shall provide a notice in writing to the appropriate regulator in the manner specified in Schedule II, at least fourteen days before submitting an application under section 9.
- (3) The applicant under sub-rule (1) shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the financial service provider.

12. Application by corporate applicant.—

- (1) A corporate applicant shall make an application for initiating the corporate insolvency resolution process under section 10 in Form 6, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (2) The corporate applicant shall provide a notice in writing to the appropriate regulator in the manner specified in Schedule II, at least fourteen days before submitting an application under section 10.
- (3) The applicant under sub-rule (1) shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the financial service provider.

13. Application by appropriate regulator. —

(1) An appropriate regulator shall make an application for initiating the corporate insolvency resolution process against a financial service provider in Form 7, accompanied with documents and records as specified in Form 7.

(2) The applicant appropriate regulator shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the financial service provider.

14. Withdrawal of application.—The Adjudicating Authority may permit withdrawal of the application made under Rules 9, 11, 12 or 13, as the case may be, on a request made by the applicant before its admission.

15. Interim resolution professional.— The applicant, wherever he is required to propose or proposes to appoint an interim resolution professional, shall obtain a written communication in Form 2 from the Administrator for his appointment as an interim resolution professional and enclose it with the application made under Rules 9, 11, 12 or 13, as the case may be.

16. Filing of application and application fee.—

(1) Till such time the rules of procedure for conduct of proceedings under the Code are notified, the application made under sub-section (1) of section 7, sub-section (1) of section 9 or sub-section (1) of section 10 shall be filed before the Adjudicating Authority in accordance with rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016.

(2) An applicant under these Rules shall immediately after becoming aware, notify the Adjudicating Authority of any winding-up petition presented against the financial service provider.

(3) The application shall be accompanied by such fee as specified in Schedule I.

(4) The application and accompanying documents shall be filed in electronic form, as and when such facility is made available and as prescribed by the Adjudicating Authority:

Provided that till such facility is made available, the applicant may submit the accompanying documents, and wherever they are bulky, in electronic form, in scanned, legible portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the Adjudicating Authority.

Form 1

(See sub-rule (1) of Rule 9)

**APPLICATION BY FINANCIAL CREDITOR(S) TO INITIATE CORPORATE INSOLVENCY
RESOLUTION PROCESS THE CODE**

*(Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 9 of the
Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of
Financial Service Providers and Application to Adjudicating Authority) Rules, 2019)*

[Date]

To
The National Company Law Tribunal
[Address]

From
[Names and addresses of the registered offices of the financial creditors]
In the matter of [name of the financial service provider]

Subject: Application to initiate corporate insolvency resolution process of [name of the financial service provider] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Names of the financial creditor(s)], hereby submit this application to initiate a corporate insolvency resolution process of [name of financial service provider]. The details for the purpose of this application are set out below:

Part I

PARTICULARS OF THE APPLICANT (PLEASE PROVIDE FOR EACH FINANCIAL CREDITOR MAKING THE APPLICATION)

1	Name of financial creditor	
2	Date of incorporation of financial creditor	
3	Identification number of financial creditor	
4	Address of the registered office of the financial creditor	
5	Name and address of the person authorised to submit application on its behalf (enclose authorisation)	
6	Name and address of person resident in India authorised to accept the service of process on its behalf (enclose authorisation)	

Part II

PARTICULARS OF THE FINANCIAL SERVICE PROVIDER

1	Name of the financial service provider	
2	Identification number of financial service provider	
3	Date of incorporation of financial service provider	
4	Nominal share capital and the paid-up share capital of the financial service provider and/or details of guarantee clause as per memorandum of association (as applicable)	
5	Address of the registered office of the financial service provider	
6	Name(s) of appropriate regulator(s)	

Part III

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL

1	Name, address, and email address of the Administrator	
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Part IV

PARTICULARS OF FINANCIAL DEBT

1	Total amount of debt granted date(s) of disbursement	
2	Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and days of default in tabular form)	

Part V

PARTICULARS OF FINANCIAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]

1	Particulars of security held, if any, the date of its creation, its estimated value as per the creditor. Attach a copy of a certificate of registration of charge issued by the registrar of companies (if the financial service provider is a company)
2	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)
3	Record of default with the information utility, if any (attach a copy of such record)

4	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)
5	The latest and complete copy of the financial contract reflecting all amendments and waivers to date (attach a copy)
6	A record of default as available with any credit information company (attach a copy)
7	Copies of entries in a banker's book in accordance with the bankers books evidence act, 1891 (18 of 1891) (attach a copy)
8	List of other documents attached to this application in order to prove the existence of financial debt, the amount and date of default

I hereby certify that to the best of my knowledge, *[name of proposed administrator]*, is in the panel of Administrators notified by the Central Government to act as an insolvency professional in accordance with the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.

[Name of the financial creditor] has paid the requisite fee for this application through *[state means of payment]* on *[date]*.

Yours sincerely,

Signature of person authorised to act on behalf of the financial creditor
Name in block letters
Position with or in relation to the financial creditor
Address of person signing

Instructions

Please attach the following to this application:

Annex I Copies of all documents referred to in this application.

Annex II Written communication by the proposed interim resolution professional as set out in Form 2.

Annex III Proof that the specified application fee has been paid.

Annex IV Where the application is made jointly, the particulars specified in this form shall be furnished in respect of all the joint applicants along with a copy of authorisation to the financial creditor to file and act on this application on behalf of all the applicants.

Annex V Copy of notice sent to the appropriate regulator.

FORM 2

(See Rule 15)

WRITTEN COMMUNICATION BY THE ADMINISTRATOR

(Under Rule 15 of the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019)

[Date]

To

The National Company Law Tribunal

[Address]

From

[Name and address of the registered office of the Administrator]

In the matter of *[name of the financial service provider]*

Subject: Written communication in connection with an application to initiate corporate insolvency resolution process in respect of [name of the financial service provider]

Madam/Sir,

I, [name of the Administrator], an Administrator in the panel of Administrators notified by the Central Government in accordance with section 227, have been proposed as the interim resolution professional by [name of applicant] in connection with the proposed corporate insolvency resolution process of [name of the financial service provider].

In accordance with Rule 15 of Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, I hereby:

- (i) agree to accept appointment as the interim resolution professional if an order admitting the present application is passed;
- (ii) disclose that I am currently serving as an interim resolution professional / resolution professional / liquidator in [insert number of proceedings] proceedings;
- (iii) certify that there are no disciplinary proceedings pending against me with the Board or [insert the name of appropriate regulator];
- (iv) affirm that I am eligible to be appointed as a resolution professional in respect of the financial service provider in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016; and
- (v) make the following 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.

(Signature of the Administrator)
(Name in block letters)

FORM 3

(See clause (a) of sub-rule (1) of Rule 10)

FORM OF DEMAND NOTICE / INVOICE DEMANDING PAYMENT UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

(Under Rule 10 of the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019)

[Date]

To

[Name and address of the registered office of the financial service provider]

From

[Name and address of the registered office of the operational creditor]

Subject: Demand notice/invoice demanding payment in respect of unpaid operational debt due from [financial service provider] under the Code.

Madam/Sir,

1. This letter is a demand notice/invoice demanding payment of an unpaid operational debt due from [name of financial service provider].
2. Please find particulars of the unpaid operational debt below:

PARTICULARS OF OPERATIONAL DEBT		
1	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	
2	Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of default in tabular form)	
3	Particulars of security held, if any, the date of its creation, its estimated value as per the creditor. Attach a copy of a certificate of registration of charge issued by the registrar of companies (if the financial service provider is a company)	
4	Details of retention of title arrangements (if any) in respect of goods to which the operational debt refers	
5	Record of default with the information utility (if any)	
6	Provision of law, contract or other document under which debt has become due	
7	List of documents attached to this application in order to prove the existence of operational debt and the amount in default	

3. If you dispute the existence or amount of unpaid operational debt (in default) please provide the undersigned, within ten days of the receipt of this letter, of the pendency of the suit or arbitration proceedings in relation to such dispute filed before the receipt of this letter/notice.

4. If you believe that the debt has been repaid before the receipt of this letter, please demonstrate such repayment by sending to us, within ten days of receipt of this letter, the following:

- (a) an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the financial service provider; or
- (b) an attested copy of any record that *[name of the operational creditor]* has received the payment.

5. The undersigned, hereby, attaches a certificate from an information utility confirming that no record of a dispute raised in relation to the relevant operational debt has been filed by any person at any information utility. (if applicable)

6. The undersigned request you to unconditionally repay the unpaid operational debt (in default) in full within ten days from the receipt of this letter failing which we shall initiate a corporate insolvency resolution process in respect of *[name of financial service provider]*.

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor
Name in block letters
Position with or in relation to the operational creditor
Address of person signing

Instructions

1. Please serve a copy of this form on the financial service provider, ten days in advance of filing an application under section 9 of the Code.
2. Please append a copy of such served notice to the application made by the operational creditor to the Adjudicating Authority.

Form 4

(See clause (b) of sub-rule (1) of Rule 10)

FORM OF NOTICE WITH WHICH INVOICE DEMANDING PAYMENT IS TO BE ATTACHED

(Under Rule 10 of the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019)

[Date]

To

[Name and address of registered office of the financial service provider]

From

[Name and address of the operational creditor]

Subject: Notice attached to invoice demanding payment

Madam/Sir,

[Name of operational creditor] hereby provides notice for repayment of the unpaid amount of INR [insert amount] that is in default as reflected in the invoice attached to this notice. In the event you do not repay the debt due to us within ten days of receipt of this notice, we may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process under section 9 of the Code.

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor
Name in block letters
Position with or in relation to the operational creditor
Address of person signing

Form 5

(See sub-rule (1) of Rule 11)

APPLICATION BY OPERATIONAL CREDITOR (S) TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE CODE

(Under Rule 11 of the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019)

[Date]

To

The National Company Law Tribunal [Address]

From

[Name and address for correspondence of the operational creditor]

In the matter of [name of the financial service provider]

Subject: Application to initiate corporate insolvency resolution process in respect of [name of the financial service provider] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Name of the operational creditor], hereby submits this application to initiate a corporate insolvency resolution process in the case of [name of financial service provider]. The details for the purpose of this application are set out below:

Part I PARTICULARS OF APPLICANT

1	Name of operational creditor	
2	Identification number of operational creditor (if any)	
3	Address for correspondence of the operational creditor	

Part II
PARTICULARS OF FINANCIAL SERVICE PROVIDER

1	Name of the financial service provider	
2	Identification number of financial service provider	
3	Date of incorporation of financial service provider	
4	Nominal share capital and the paid-up share capital of the financial service provider and/or details of guarantee clause as per memorandum of association (as applicable)	
5	Address of the registered office of the financial service provider	
6	Name, address and authority of person submitting application on behalf of operational creditor (enclose authorisation)	
7	Name and address of person resident in India authorised to accept the service of process on its behalf (enclose authorisation)	
8	Name(s) of appropriate regulator(s)	

Part III
PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL [IF PROPOSED]

1	Name, address, and email address of the Administrator	
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Part IV
PARTICULARS OF OPERATIONAL DEBT

1	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	
2	Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and dates of default in tabular form)	

Part V
PARTICULARS OF OPERATIONAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]

1	Particulars of security held, if any, the date of its creation, its estimated value as per the creditor. Attach a copy of a certificate of registration of charge issued by the registrar of companies (if the financial service provider is a company)
2	Details of reservation / retention of title arrangements (if any) in respect of goods to which the operational debt refers
3	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)
4	Record of default with the information utility, if any (attach a copy of such record)
5	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)
6	Provision of law, contract or other document under which operational debt has become due
7	A statement of bank account where deposits are made or credits received normally by the operational creditor in respect of the debt of the financial service provider (attach a copy)
8	List of other documents attached to this application in order to prove the existence of operational

[debt and the amount in default]

I hereby certify that to the best of my knowledge, [name of proposed administrator], is in the panel of Administrators notified by the Central Government to act as an insolvency professional in accordance with the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019. [Where Applicable]

[Name of the operational creditor] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor

Name in block letters

Position with or in relation to the operational creditor

Address of person signing

Instructions

Please attach the following to this application:

Annex I Copy of the invoice / demand notice as in Form 3 of the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 served on the financial service provider.

Annex II Copies of all documents referred to in this application.

Annex III Copy of the relevant accounts from the banks/financial institutions maintaining accounts of the operational creditor confirming that there is no payment of the relevant unpaid operational debt by the operational debtor, if available.

Annex IV Affidavit in support of the application in accordance with the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.

Annex V Written communication by the proposed interim resolution professional as set out in Form 2 of the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 [Where Applicable].

Annex VI Proof that the specified application fee has been paid.

Annex VII Copy of notice sent to the appropriate regulator.

Note: Where workmen/employees are operational creditors, the application may be made either in an individual capacity or in a joint capacity by one of them who is duly authorised for the purpose.

Form 6

(See sub-rule (1) of Rule 12)

**APPLICATION BY CORPORATE APPLICANT TO INITIATE CORPORATE INSOLVENCY
RESOLUTION PROCESS UNDER THE CODE**

(Under Rule 12 of the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019)

[Date]

To

The National Company Law Tribunal
[Address]

From

[Name and address for correspondence of the corporate applicant]

In the matter of [name of the financial service provider]

Subject: Application to initiate corporate insolvency resolution process in respect of [name of the financial service provider] under the Code.

Madam/Sir,

We hereby submit this application to initiate a corporate insolvency resolution process in respect of [name of financial service provider]. The details for the purpose of this application are set out below:

Part I
PARTICULARS OF THE CORPORATE APPLICANT

1	Name address, email address, identification number and address for communication of the corporate applicant	
2	Name address, email address, identification number and address of the registered office of financial service provider	
3	Names and addresses of all directors, promoters, designated partners of the financial service provider (as applicable)	
4	Date of incorporation of financial service provider	
5	Nominal share capital and the paid-up share capital of the financial service provider and/or details of guarantee clause as per memorandum of association (as applicable)	
6	Name, address and authority of person submitting application on behalf of corporate applicant (enclose authorisation)	
7	Name and address of person resident in India authorised to accept the service of process on its behalf (enclose authorisation)	
8	Documentation to show that the corporate applicant is authorised to initiate the corporate insolvency resolution process	
9	Name(s) of appropriate regulator (s)	

Part II
PARTICULARS OF PROPOSED INTERIM RESOLUTION PROFESSIONAL

1	Name, address, and email address of the Administrator	
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Part III
PARTICULARS OF FINANCIAL / OPERATIONAL DEBT [CREDITOR WISE, AS APPLICABLE]

1	Name(s) of financial / operational creditor(s)	
2	Address of correspondence of the financial / operational creditor(s)	
3	Total debt raised and amount in default	
4	Date when the financial/ operational debt was incurred	
5	Particulars of security held, if any, the date of its creation, its estimated value as per the creditor. Attach a copy of a certificate of registration of charge issued by the registrar of companies (if the financial service provider is a company)	
6	Details of retention of title arrangements (if any) in respect of goods to which the operational debt refers	
7	Record of default with the information utility, if any	

8	List of documents attached to this application in order to prove the existence of financial/ operational debt and the amount in default	
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I hereby certify that to the best of my knowledge, [name of proposed administrator], is in the panel of Administrators notified by the Central Government to act as an insolvency professional in accordance with the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019. [Where Applicable]

[Name of the corporate applicant] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

Signature of person authorised to act on behalf of the corporate applicant
Name in block letters
Position with or in relation to the corporate applicant
Address of person signing

Instructions

Please attach the following to this application:

- Annex I In case of financial debt, record of default obtained through the information utility or all documents listed in serial number 8 of part –III of this application.
- Annex II In case of operational debt, (i) copy of invoice / demand notice served by an operational creditor on the financial service provider and (ii) record of default obtained through the information utility or all documents listed in serial number 8 of part-III of this application.
- Annex III Written communication by the proposed interim resolution professional as set out in Form 2 of the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019)
- Annex IV Copy of the relevant books of accounts of the financial service provider evidencing the default to creditors.
- Annex V Copies of audited financial statements of the financial service provider for the last two financial years and the provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application.
- Annex VI A statement of affairs made up to a date not earlier than fourteen days from the date of application including the following document, namely:-
 - (a) a list of the financial service provider's assets and liabilities, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;
 - (b) in the case of any property on which a claim against the financial service provider is wholly or partly secured, particulars of the claim and its amount, and of how and when the security was created;
 - (c) the names and addresses of the financial creditors and operational creditors of the financial service provider, with the amounts due to each of them;
 - (d) particulars of any debts owed by or to the financial service provider to or by persons connected with it;
 - (e) whether any, and if so what, guarantees have been given in relation to the debts of the financial service provider by other persons, specifying which, if any, of the guarantors is a related party to the financial service provider and the corporate applicant; and
 - (f) the names and addresses of the members and partners of the financial service provider, as the case may be, with details of their respective

shareholdings.

Annex VII A copy of:

- (a) relevant extract of any constitutional document or shareholders' agreement that records the authority of the corporate applicant to make this application, where the corporate applicant is a member or partner of the financial service provider; or
- (b) relevant extract of an employment agreement, constitutional document or filings made to the Registrar of Companies confirming the authority of the corporate applicant to make this application, where the corporate applicant is an individual in charge of managing the operations and resources of the financial service provider or has control and supervision over the financial affairs of the financial service provider.

Annex VIII Affidavit in support of the application in accordance with the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019

Annex IX Proof that the specified application fee has been paid.

Annex X Copy of notice sent to the appropriate regulator.

Form 7
(See sub-rule (1) of Rule 13)

**APPLICATION BY APPROPRIATE REGULATOR(S) TO INITIATE INSOLVENCY
RESOLUTION PROCESS UNDER THE CODE.**

(Under Rule 13 of the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019)

[Date]

To
The National Company Law Tribunal
[Address]

From
[Names and addresses of the registered office of the appropriate regulator]
In the matter of [name of the financial service provider]

Subject: Application to initiate corporate insolvency resolution process [name of the financial service provider] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Names of the financial creditor(s)], hereby submit this application to initiate a corporate insolvency resolution process [name of financial service provider]. The details for the purpose of this application are set out below:

Part I
**PARTICULARS OF APPLICANT (PLEASE PROVIDE FOR EACH FINANCIAL
CREDITOR MAKING THE APPLICATION)**

1	Name of appropriate regulator	
2	Address of the registered office of the appropriate regulator	
3	Name and address of the person authorised to submit application on its behalf (enclose authorisation)	

4	Name and address of person authorised to accept the service of process on its behalf (enclose authorisation)	
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Part II
PARTICULARS OF THE FINANCIAL SERVICE PROVIDER

1	Name of the financial service provider	
2	Identification number of financial service provider	
3	Date of incorporation of financial service provider	
4	Nominal share capital and the paid-up share capital of the financial service provider and/or details of guarantee clause as per memorandum of association (as applicable)	
5	Address of the registered office of the financial service provider	
6	Name(s) of appropriate regulator(s)	

Part III
PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL

1.	Name, address, and email address of the Administrator	
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Part IV
PARTICULARS OF DEFAULT

I hereby certify that to the best of my knowledge, [name of proposed administrator], is in the panel of Administrators notified by the Central Government to act as an insolvency professional in accordance with the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.

Yours sincerely,

Signature of person authorised to act on behalf of the financial creditor
Name in block letters
Position with or in relation to the financial creditor
Address of person signing

Instructions

Please attach the following to this application:

Annex I Copies of all documents referred to in this application.

Annex II Written communication by the proposed interim resolution professional as set out in Form 2.

Annex III Proof that the specified application fee has been paid.

Annex IV Where the application is made jointly, the particulars specified in this form shall be furnished in respect of all the joint applicants along with a copy of authorisation to the financial creditor to file and act on this application on behalf of all the applicants.

Annex V Copy of notice sent to the appropriate regulator.

SCHEDULE I

[See sub-rule (3) of Rule 16]

(Under Rule 16 of the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019)

S. No.	Applicant	Fee payable (in ₹)
1	Application by financial creditor (whether solely or jointly)	25000
2	Application by operational creditor	2000
3	Application by financial service provider	25000

SCHEDULE II

[See sub-rule (2) of Rules 9, 11 and 12]

(Under Rule 9/11/12 of the *Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019*)

NOTICE OF INITIATION OF THE CORPORATE INSOLVENCY RESOLUTION PROCESS

To

The [Appropriate Regulator]

[Address]

From

[Name and address of the financial creditor, operational creditor or the financial service provider, as the case may be]

In the matter of [name of the financial service provider]

Subject: Written communication in connection with an application to initiate corporate insolvency resolution process in respect of [name of the financial service provider]

Madam/Sir,

I, [name of the authorized representative the financial creditor, operational creditor or the financial service provider, as the case may be], am hereby providing notice that [name and address of the financial creditor, operational creditor or the financial service provider] intends to initiate the corporate insolvency resolution process of the [name of the financial service provider].

A copy of the proposed application in the appropriate form as prescribed under *Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019* is enclosed.

Authorised Signatory

(Signature of person authorised to act on behalf of the Financial Creditor, Operational Creditor or the Financial Service Provider)
(Name in block letters)

(Position with or in relation to the Financial Creditor, Operational Creditor or the Financial Service Provider)
(Address of person signing)

ANNEXURE V

Tentative Distribution of FSPs for the Purpose of Applicability of the IBC (As suggested by Regulators, subject to modifications)

[Note: To be revised based on inputs received from regulators]

Regul- ator	Applicability of IBC		
	IBC, as It Is	IBC with Modifications	Outside IBC
	1 2	3	4
RBI	1. NBFCs (Peer to Peer) 2. NBFCs (Account Aggregators)	1. NBFCs and HFCs (Other than those stated in Columns 2 & 4) 2. Payment System Operators (Not Systemically Important) 3. Factors	1. Banks 2. NBFCs and HFC (Systemically Important and/or Deposit Taking) 3. Systemically Important Payment System Operators 4. FMIs 5. ARCs
SEBI	1. Merchant Bankers 2. Registrars to Issue 3. KYC Registration Agencies 4. Under-writers 5. Credit Rating Agencies 6. Investment Advisers 7. Research Analysts 8. Share Transfer Agents 9. Portfolio Managers 10. Managers of Alternate Investment Funds and Real Estate Investment Trusts 11. Investment Managers of Infrastructure Investment Trusts	1. Stock-Brokers 2. Sub-Brokers 3. Debenture Trustees 4. Depository Participants 5. Bankers to an Issue 6. Asset Management Companies & Trustees and Sponsors of Mutual Fund 7. Sponsors and Trustees of Venture Capital Funds 8. Alternate Investment Funds & Sponsors and Trustees of AIFs 9. Sponsors and Trustees of Real Estate Investment Trusts and Infrastructure Investment Trusts 10. Custodians 11. Collective Investment Management Companies & Trustees of Collective Investment Funds	FMIs
IRDAI	1. Corporate Surveyors 2. TPAs 3. Web Aggregators 4. Insurance Marketing Firms 5. Insurance Repositories	Brokers	Insurance Companies
PFRDA	1. Retirement Advisors 2. Points of Presence Aggregators	Pension Funds	1. NPS Trusts 2. Trustee Banks 3. Annuity Service Providers 4. Custodian of Securities 5. Central Record Keeping Agencies

ANNEXURE VI

An overview of the entities engaged in the business of providing financial services in India
A. Reserve Bank of India (RBI)

S. No.	Category of FSP*	Sub-Category of FSP	As on	Total
1	Commercial Banks		Aug 31, 2019	
		Public Sector Banks		18
		Private Sector Banks		22
		Local Area Banks (LAB)		3
		Small Finance Banks (SFB)		10
		Payments Banks (PB)		7
		Foreign banks having branch - presence in India		44
2	Non-Banking Financial Companies (NBFCs)		Aug 31, 2019	
		NBFCs) holding Certificate of Registration (CoR) to accept Public Deposits		82
		NBFC – Non-Deposit taking <ul style="list-style-type: none"> • Systemically Important non-deposit accepting NBFCs (NBFC-NDSI) (272) • NBFCs not accepting Public Deposits other than NBFC-ND-SI (9208) 		9,480
3	Asset Reconstruction Companies			29
4	Payment System Operators		Aug 26, 2019	
		Financial Market Infrastructures		1
		Retail Payment Organisation		1
		Card Payment Networks		5
		Cross Border Money Transfer		9
		ATM Network		5
		Pre-Paid Payment Instruments		45
		Bharat Bill Payment Central Unit		10

* Regional Rural Banks (RRBs) and Cooperative Banks are not included in the above table.

Sources:

- Websites of Banks in India, <https://www.rbi.org.in/scripts/banklinks.aspx> Reserve Bank of India,
- Non-Banking Financial Companies, https://www.rbi.org.in/Scripts/BS_NBFCList.aspx Reserve Bank of India,
- Certificates of Authorisation Issued by the RBI under the Payment and Settlement Systems Act, 2007 for Setting up and Operating Payment System in India, Publications, Reserve Bank of India, <https://www.rbi.org.in/Scripts/PublicationsView.aspx?id=12043>

B. Securities and Exchange Board of India (SEBI)

S. No.	Category of Financial Service Provider (FSP)	As on	Total
1	Stock Exchanges	Sep 15, 2019	6
2	Commodity Derivative Exchanges	Sep 15, 2019	3
3	Depositories	Sep 15, 2019	2
4	Clearing Corporations	Sep 15, 2019	7
5	Registered Alternative Investment Funds	Sep 15, 2019	608
6	Registered Stockbrokers in equity segment	Sep 15, 2019	3,357
7	Registered Stockbrokers in Equity Derivative Segment	Sep 15, 2019	2,797
8	Registered Stockbrokers in Currency Derivative Segment	Sep 15, 2019	2,723
9	Registered Stockbrokers in Interest Rate Derivative Segment	Sep 15, 2019	1,351
10	Registered Stockbrokers in Debt Segment	Sep 15, 2019	239
11	Registered Stockbrokers in Commodity Derivative Segment	Sep 15, 2019	2,318
12	Banker to an Issue	Sep 15, 2019	65
13	Credit Rating Agency - CRA	Sep 15, 2019	7
14	Registered Collective Investment Management Company	Sep 15, 2019	1
15	Registered Custodians of Securities	Sep 15, 2019	19
16	Debentures Trustee	Sep 15, 2019	32
17	Designated Depository Participants	Jan 10, 2019	16
18	Qualified Depository Participants	Apr 17, 2017	62
19	Registered Depository Participants – CDSL	Sep 15, 2019	617
20	Registered Depository Participants – NSDL	Sep 15, 2019	287
21	FPIs / Deemed FPIs (Erstwhile FIIs/QFIIs)	Sep 15, 2019	9,850
22	Registered Foreign Venture Capital Investors	Sep 15, 2019	251
23	Investment Adviser	Sep 15, 2019	1,239
24	Registered Infrastructure Investment Trusts	Sep 15, 2019	10
25	KYC (Know Your Client) Registration Agency	Apr 17, 2017	5
26	Merchant Bankers	Sep 15, 2019	214
27	Registered Mutual Funds	Sep 15, 2019	45
28	Registered Portfolio Managers	Sep 15, 2019	352
29	Registrars to an issue and share Transfer Agents	Sep 15, 2019	79
30	Research Analyst	Sep 15, 2019	664

31	Self-Certified Syndicate Banks under the Syndicate ASBA facility (equity issuances)	Apr 01, 2019	58
32	Self-Certified Syndicate Banks under the direct ASBA facility (equity issuances)	Apr 01, 2019	66
33	Underwriters	Sep 15, 2019	2
34	Registered Venture Capital Funds	Sep 15, 2019	193
35	Self-Certified Syndicate Banks eligible as Issuer Banks for UPI	Apr 01, 2019	46
36	Self-Certified Syndicate Banks eligible as Sponsor Banks for UPI	Apr 01, 2019	5
37	Real Estate Investment Trust	Sep 15, 2019	2
38	List of mobile applications for using UPI in Public Issues	Jul 27, 2019	7
39	Self-Certified Syndicate Banks under the direct ASBA facility (debt issuances)	Aug 31, 2019	33
40	Self-Certified Syndicate Banks under the Syndicate ASBA facility (debt issuances)	Aug 31, 2019	36

Source: Intermediaries/Market Infrastructure Institutions, Securities and Exchange Board of India, <https://www.sebi.gov.in/intermediaries.html>

C. Pension Fund Regulatory and Development Authority (PFDRA)

S. No.	Category of Financial Service Provider (FSP)	As on	Total
1	Point of Presence (PoP)	Mar 13, 2019	263
2	CRAs registered under NPS	Sep 15, 2019	2
3	Trustee Bank under NPS	Sep 15, 2019	1
4	Pension Funds (PFs) for Government Sector	Sep 15, 2019	3
5	Pension Funds (PFs) for Private Sector	Sep 15, 2019	8
6	Custodian	Sep 15, 2019	1
7	Annuity Service Providers (ASPs)	Sep 15, 2019	10
8	Registered Retirement Advisers Individual	Sep 15, 2019	49
9	Registered Retirement Advisers Other than Individual	Sep 15, 2019	4

Source: National Pension System Trust, NPS Architecture, NPS Trust, <http://www.npstrust.org.in/>

D. Insurance Regulatory and Development Authority of India (IRDAI)

S. No.	Category of Financial Service Provider (FSP)	As on	Total
1	Life Insurers	July 10, 2019	24
2	Non-life Insurers	July 10, 2019	34
3	Re-insurers	July 10, 2019	1
4	Insurance Brokers	Aug 30, 2019	421
5	Licensed Individual surveyors	Oct 31, 2018	11,976
6	Corporate Surveyors	Oct 31, 2018	630

7	TPA	Mar 10, 2019	26
8	Web Aggregators	Feb 28, 2019	27
9	Insurance Repositories	June, 2019	4
10	Insurance Marketing Firms	June 30, 2019	280

Source: Insurance Regulatory and Development Authority of India, <https://www.irdai.gov.in>

ANNEXURE VII



भारतीय रिज़र्व बैंक RESERVE BANK OF INDIA

www.rbi.org.in

कार्यपालक निदेशक
Executive Director

Ref No. ED LV 27/2019-20

October 4, 2019

Dear Dr. Sahoo,

Thank you for sharing the draft report pursuant to the discussions in the last meeting of the Sub-committee of the Insolvency Law Committee held on September 20, 2019. While the draft report correctly reflects the discussions and the agreement reached on many of the issues, there are certain key issues on which our understanding/views are at variance.

2. In this context, I would like to invite your reference to the discussions at the meeting of the Sub-Committee of the Financial Stability and Development Council (FSDC-SC), held at RBI, Mumbai on September 27, 2019, where both yourself and the Secretary, MCA were present. I understand that that the issue of resolution of financial service providers was also discussed and it was decided that the steps initiated by the Ministry of Corporate Affairs and the IBBI to put in place measures for resolution of FSPs under the provisions of IBC, which is the subject matter of the report under consideration, should be held in abeyance for now.

3. In view of the above, it is felt that further action like finalization of the report should not be taken at this juncture.

4. Nonetheless, I am enclosing our comments on the draft report circulated earlier, along with the marked-up copy of the draft, highlighting the required modifications based on the position we had taken in the matter during the deliberations on the proposals.

With best regards,

Yours sincerely,

(Lily Vadhera)

Encl. a.a.

Dr.. M.S. Sahoo
Chairman
Insolvency and Bankruptcy Board of India
Mayur Bhavan
New Delhi

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हिंदी आसान है, इसका प्रयोग बढ़ाइए।

Comments of the RBI on the Draft Report of the Sub-Committee of the Insolvency Law Committee

a. Involvement of regulators in the resolution process

RBI had strongly conveyed that the role for regulators in the resolution process needs to be kept at a minimum. In particular, there is no need for regulators to be informed of all filings in advance since this arrangement is only intended to address resolution of non-systemically important entities. Even the fact of being informed may entail certain obligations.

However, it is observed that the Draft Report has retained the earlier proposal, disregarding our views. As there was no consensus on this issue, as has been rightly observed in the Report, it will only be appropriate that primacy be accorded to the views of the regulator as ultimately the onus will be on the regulator for their involvement with the resolution process.

b. Appointment of administrators

While there was broad agreement that a separate panel of administrators may be notified by the Central Government in consultation with the regulators, no final decision was taken with regard to the mechanics of the process. A suggestion was made by the Joint Secy, MCA Shri Gyaneshwar Kumar Singh that the regulators could propose a broad set of criteria based on which the Government/IBBI could identify the eligible persons to be put on the panel. This suggestion seems workable and we strongly suggest that the Sub-committee may agree on the same.

Further, it is observed that going beyond just identifying the name of the administrators, the Draft Report presupposes a key role for the regulators in even exercising indirect oversight over the resolution process through such administrators. This issue was not discussed in the meeting but going by the principle of non-involvement of regulators in the IBC process, it will neither be feasible nor appropriate for the regulators to have any involvement in the process once the panel has been notified by the Central Government based on broad criteria suggested by the regulators.

c. Process for regulatory approval

The Sub-committee had in-principle agreed with the RBI proposal to require a prior no-objection from the regulators. RBI had also proposed that the approval may be sought only in respect of the final resolution plan approved by the committee of creditors and that the regulator must be given 45 working days to decide on the same.

However, the Draft Report has advanced the stage of seeking regulatory approval, from the proposed post-COC approval to submission of the resolution plan by each resolution applicant. This would result in multiple resolution plans being received by the regulators for

resolution of any particular FSP, only one of which will finally be approved by the COC. This would get unwieldy and would put severe stress on the regulatory resources.

While the RBI proposal entails a 45-day window between finalisation of the resolution plan by the COC and its filing before the Adjudicating Authority, given the hard nature of the deadline, and the fact that the recent amendment to the IBC has specifically provided an additional 60-day window for any procedural requirements, it should be possible to complete the entire process within the prescribed deadlines.

As regards the timeline for the regulator to decide on each case, it must be emphasized that the due diligence process entails engagements with multiple stakeholders and even the proposed 45 working days seem ambitious. Any further curtailment of this period may make the process a non-starter.

It is therefore strongly reiterated that, (i) regulatory approval maybe sought only in respect of the resolution plan approved by the COC; and, (ii) the regulator must be give a time of 45 working days to complete the due diligence process.

REFERENCES

- Financial Stability Report, Issue No. 19, Reserve Bank of India, June, 2019.
- Report of the Committee to Draft Code on Resolution of Financial Firms, Department of Economic Affairs, Ministry of Finance, September 21, 2016.
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- Websites of Banks in India, Reserve Bank of India, <https://www.rbi.org.in/scripts/banklinks.aspx>
- Non-Banking Financial Companies, Reserve Bank of India, https://www.rbi.org.in/Scripts/BS_NBFCList.aspx
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- Intermediaries/Market Infrastructure Institutions, Securities and Exchange Board of India, <https://www.sebi.gov.in/intermediaries.html>
- National Pension System Trust, NPS Architecture, NPS Trust, <http://www.npsttrust.org.in/>
- Insurance Regulatory and Development Authority of India, <https://www.irdai.gov.in>
