

CIRCULAR

No.: IBBI/CIRP/37/2021

04th January, 2021

To

All Registered Insolvency Professionals
All Recognised Insolvency Professional Entities
All Registered Insolvency Professional Agencies
(By mail to registered email addresses and on website of the IBBI)

Dear Madam / Sir,

Sub: Retention of records relating to Corporate Insolvency Resolution Process

The Insolvency and Bankruptcy Code, 2016 (Code) read with various Regulations require an insolvency professional (IP) to maintain several records in relation to the assignments conducted by him under the Code. Keeping in view the importance of such records, clause (g) of sub-regulation (2) of regulation 7 of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) provides that the registration granted to an IP shall be subject to the condition that he maintains records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment. Clause 19 of the Code of Conduct appended to the First Schedule to the IP Regulations mandates an IP must provide all records as may be required by the Board or the insolvency professional agency (IPA) with which he is enrolled.

2. Clause (a) of sub-regulation (4) of regulation 3 of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) provides that the Board shall conduct inspection, inter alia, to ensure that the records are being maintained by an IP in the manner required under the relevant regulations. Sub-regulation (2) of regulations 4 and sub-regulation (2) of regulation 8 of the (Inspection Regulations) empower the Inspecting Authority / Investigating Authority to direct the IP to submit records, as may be required, and it is his duty to produce such records in his custody or control before such Authority.

3. Regulation 39A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) mandates the interim resolution professional (IRP) and the resolution professional (RP) to preserve a physical as well as an electronic copy of the records relating to the corporate insolvency resolution process (CIRP) of the corporate debtor (CD), as per the record retention schedule as communicated by the Board in consultation with IPAs.

4. Keeping with the above, the Board, in consultation with the IPAs and IPs, directs as under:

(i) An IP shall preserve copies of records generated in electronic form for a minimum period of eight years, from the date of completion of the CIRP or the conclusion of any proceeding relating to CIRP, before the Adjudicating Authority (AA), Appellate Authority or Court, or any matter pending with the Board, whichever is later.

(ii) For records other than (i) above, the IP shall maintain copies for minimum period of three years in physical form, and for minimum period of eight years in electronic form, from the date of completion of the CIRP or the conclusion of any proceeding relating to CIRP, before the Adjudicating Authority (AA), Appellate Authority or Court, or any matter pending with the Board, whichever is later.

(iii) An IP shall preserve the records at a secure place and ensure that unauthorised persons do not have access to the same. For example, he may store copies of records in electronic form with an Information Utility. Notwithstanding the place and manner of storage, the IP shall be under obligation to produce records as may be required under the Code and the Regulations.

(iv) An IP shall preserve records relating to that period of a CIRP which he has handled, irrespective of the fact that he did not continue the assignment till its conclusion. For example, an IP served for three months as RP before he was replaced by another IP, who served till conclusion of the CIRP. The former shall preserve records relating to the first three months, and the latter shall preserve records relating to the balance period of the CIRP.

(v) An IP, in the matter of a CIRP, shall preserve the following copies of records relating to/forming basis for:

- (a) his appointment as IRP or RP, including the terms of appointment;
- (b) handing over / taking over by him;
- (c) admission of CD into CIRP;
- (d) public announcement;
- (e) the constitution of CoC and CoC meetings;
- (f) claims, verification of claims, and list of creditors;
- (g) engagement of professionals, registered valuers, and insolvency professional entity, including work done, reports etc., submitted by them;
- (h) information memorandum;
- (i) all filings with the AA, Appellate Authority and their orders;
- (j) invitation, consideration and approval of resolution plan;
- (k) statutory filings with IBBI and IPA;
- (l) correspondence during the CIRP;
- (m) insolvency resolution process cost pertaining to CIRP;
- (n) avoidance transactions or fraudulent trading; and
- (o) any other records, which is required to give a complete account of the CIRP.

5. This is issued in exercise of the powers under clauses (aa) and (g) of sub-section (1) of section 196 of the Code read with regulation 39A of the CIRP Regulations.

Yours faithfully,

Sd/-

(Dr. Kokila Jayaram)

Deputy General Manager

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