

Specialised Provisions Of IBC For Financial Service Providers

The Insolvency and Bankruptcy Board of India vide its Notification on November 15, 2019 has notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (“Rules”). The Rules became effective from the date of notification. The Rules shall be applicable to only those Financial Service Providers (“FSPs”) who shall be notified by the Central Government under Section 227 of Insolvency and Bankruptcy Code, 2016 (“IBC”) from time to time.

The Rules stipulate that the provisions of IBC shall apply mutatis mutandis to FSPs, subject to certain modifications.

This article shall briefly discuss the modifications that shall be applicable to FSPs under the following:

1. Corporate Insolvency Resolution Process
2. Liquidation Process
3. Voluntary Liquidation process

1. Corporate Insolvency Resolution Process (CIRP)

The Rules stipulate that the provisions relating to CIRP shall be applicable to FSPs subject to following modifications:

- i. **Initiation of proceedings-** Unlike other entities, CIRP against a FSP can be initiated only through an application by the Regulator of the FSP. The application fee for initiation of CIRP has been prescribed to be INR 25000. Such application shall be dealt with in the same manner as an application by a financial creditor under the Code. Upon admission of the application, the Adjudicating Authority shall appoint the individual proposed by the appropriate regulator in its application as an Administrator.
- ii. **Interim Moratorium-** An interim moratorium shall commence for the FSP on and from the date of filing of the application till its admission or rejection. The license of the FSP to engage in the activities of providing financial services shall not be suspended during the interim-moratorium and the CIRP.
- iii. **Advisory Committee-** In order to advise the Administrator during the CIRP, the appropriate regulator may constitute an Advisory Committee, within 45 days of the insolvency commencement date. Such committee shall consist of three or more members, who shall be persons of ability, integrity and standing, with expertise or experience in finance, economics, accountancy, law, public policy or any other profession in the area of financial services or risk management, administration, supervision or resolution of a financial service provider.
- iv. **Resolution Plan-** The Resolution plan should contain a statement explaining how the resolution applicant intends to conduct the business of FSP. The Administrator shall be required to seek a “no-objection” from the appropriate regulator after its approval by the Committee of Creditors. The time limit for the appropriate regulator to refuse a “no-objection” shall be 45 working days from the receipt of application, otherwise it shall be deemed that ‘no objection’ has been granted.

2. Liquidation Process

The Rules stipulate that the provisions relating to Liquidation Process shall be applicable to FSPs subject to the following modifications:

- i. The business license or registration of the FSP shall not be suspended or cancelled during the liquidation process, unless an opportunity of being heard has been provided to the liquidator;
- ii. The Adjudicating Authority shall provide an opportunity of being heard to the appropriate regulator before passing an order for liquidation or dissolution of FSP.

3. Voluntary Liquidation Process

The Rules stipulate that the provisions relating to Voluntary Liquidation Process shall be applicable to FSPs subject to following modifications:

- i. The FSP shall initiate voluntary liquidation process only after permission from the appropriate regulator.
- ii. Adjudicating Authority shall provide an opportunity to be heard to the appropriate regulator before passing an order for dissolution of FSP.

Other Specific Modifications for FSP

Insolvency professional for proceedings for FSP under IBC

The Rules prescribe that an insolvency professional proposed by the appropriate regulator, shall be appointed as such by the Adjudicating Authority shall act as an insolvency professional, interim resolution professional, resolution professional or liquidator, as the case may be and shall be referred to as Administrator. Such Administrator shall have the same 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 FSP.

Third Party Assets

the Rules clarify that moratorium will not apply to any third-party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties. However, the FSP Rules also provides that an Administrator shall take control and custody of third-party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties only for the purpose of dealing with them in the manner, as may be notified by the Central Government under Section 227.

Recently, exercising its powers under these rules, RBI has initiated Corporate Insolvency proceedings against DHFL. DHFL had a debt to the tune of Rs 92,715 crore, of which secured loans are Rs 73,833 crore and unsecured loans are Rs 18,881 crore as of September 2019. RBI superseded the Board of DHFL on November 20, 2019 and appointed R Subramaniakumar, former managing director (MD) and chief executive officer of Indian Overseas Bank, as the administrator of DHFL.

In view of the volume of funds caught with debtors with dearth of liquidity of funds, this move may be the respite that many debt saddled FSPs require given the current situation of the economy. However, considering the fact that money of the public is involved, it shall be important for the appropriate regulator to ensure that the reins of a FSP go in capable hands.