CIRP - PART - IV

[Sec. 29 - 32A]

Sec. / Reg.	
29	Preparation of Information Memorandum
Reg. 36	Contents of Information Memorandum.
Reg. 27	Appointment of Registered valuer.
Reg 36A	Process of inviting Resolution plan.
Reg. 36B	Request for Resolution plan.
Reg. 36C	Strategy for Marketing of Assets.
Reg. 37	Measures for Resolution in Resol^{n} plan.
Reg. 38	Mandatory contents of Resolution plan.
29A	Person ineligible to be resolution applicant
30	Submission of Resolution plan.
Reg. 39	Approval of Resolution plan by COC
31	Approval of Resolution plan by AA
32	Appeal
32A	Liability for prior offence.

Section 29 - Preparation of Info. Memorandum
Read with Reg - 36

1. R. Pro shall prepare an info memo. for formulating R. Plan in such form as may be specified by board.

2. R. Pro shall provide to the Resolution applicant access to all relevant info in physical and electronic form, provided the the resolution applicant undertake.
   - → To comply provisions → confidentiality
     → Insider trading
   - → To protect any intellectual property of CD it may have access.
   - → Not to share relevant info → with 3rd party

Regulation - 36

Resolution pro. —Info. Memorandum→ Each mem. of CoC

on or Before 95th day* from insolv. comm. date

It shall contain following details.

- → Assets and liabilities with description as on insolv. comm. date.
- → The latest Annual Financial statement.
- → Audited Fin. statement of the CD for the last 2 FY. and the provisional Fin. statement for the C.Y made up to the date not earlier than 14 days from the date of the application.
- → A list of creditors containing the Names, amount of claimed by them, security int. in respect of such claim.
- → particulars of the debt due from or to the CD with respect to Related party.
- → Details of guarantees that have been given in relation to the debt of the CD by other ~~guarantors~~ person specifying which gurantor is a related party.
- → Name / Add. of Mem / partners holding at least one percent stake in the CD.
- → Details of all material litigation and ongoing investigation or proceeding initiated by Govt / statutory authorities.
- → No. of workers / employees and Liabilities of CD towards them.
- → Co. overview incl. snapshot of business performance, key contracts key investment highlights, and other factors which bring out the value as a going concern over and above the asset of CD.

Regulation - 27.

↓

IBBI has directed that every valuation required Under the IBC is required to be conducted by :-

Registered valuer.

↓

CIRP comm. — Appointment.

↓ Resoln prof. —within 7 Days.→ From his Appointment. (R.P)

within 47th Day from comm CIRP

→ R. Prof. appoint two Registered valuer. :- To determine fair value and Liquidation value.

↓

Following shall not be a Registered valuer.

- → A relative of the Resolution professional.
- → A related party of the CD.
- → An auditor of the CD at any time during 5 yr P. CIRP.
- → partners / Dir. of insolvency professional entity

Regulation - 35.

↓

→ Determination of Fair value and Liquidation value of CD

↓

a) Two Registered valuer shall submit to R.Pro an Estimate of fair value and Liquidation value

↓

b) If the two estimates of value are significantly different or on receipt of a proposal to appoint a third registered valuer from coc, the R.pro may appoint 3rd Reg. valuer.

↓

c) The average of two closest estimates of a value shall be considered a fair value or Liquidation value.

→ significantly different means difference of 25% in Liquidn value under an asset class and same shall be calculated as :

$$\left[\frac{L_1 - L_2}{L_1}\right] \times 100,$$

where L_1 = Higher value of Liquidn

L_2 = Lower value of Liquidn

→ To maintain confidentiality of values, R.Pro should provide these value only on receiving undertaking from all members to the effect that they shall maintain confidentiality.

Regulation - 36A

Resol^n prof. → within 60 days from CIRP comm. Date an → (Resol^n Applicants)

Invitation for EOI

- In form G (sch I)
  - Published in
    - one ENP, one RNP
    - other Location in the opinion of RP the CD conduct material business
    - on website - CD
    - on website - Board (if any)

Shall include

- The criteria for prospective Resol^n Applicant as approved by committee.
- Ineligibility Norms u/s 29A of code
- Information about the CD
- shall not require payment of any fee or any non refundable deposit for submission of Expression of int.

• Any Modification of EOI - once.

• EOI received beyond the timeline specified - Rejected by R. Pro

(Resol^n Applicant) → within 15 Days from invit^n for EOI → Resol^n Prof.

EOI

shall be accompanied by -

Regulation - 25A (7)

- Undertaking by Resol^n applicant that it meets the criteria specified by the committee.
- Undertaking - It does not suffer from any ineligibility - 29A
- Undertaking - It shall intimate the Resol^n Professional forthwith if it becomes ineligible at any time during the CIRP.
- Undertaking - That every info. and record provided in EOI is true and correct. Discovery of false info and record will render the applicant ineligible to submit Resol^n plan. Forfeit any refundable deposit and attract penal action.
- Undertaking - It shall maintain the confidentiality of info and shall not use such info to cause undue gain or loss to itself or any other person.
- Relevant Record in evidence of meeting the criteria
- Relevant info. and records to enable an assessment of ineligibility u/s 29A.

Resolⁿ prof. → w - $\boxed{\text{10 Days}}$ from EOI → Provisional List →
- Members of the CoC &
- To all prosp. Resolⁿ applicant who submitted the EOI.

issue
w - 5 Days from Last Date ^ pro. List
objections.

Final List of R. applicant w- $\boxed{\text{10 Days}}$ of the last date of receiving objection. → Mem. of CoC.

Regulation - 36 B

↓

The Resolution prof.

↓

within $\boxed{\text{5 days}}$ of the date of issue of final list

↓

- Info. Memo-randum
- Evaluation Matrix.
- A Request for Resolⁿ plan

⇓

TO

→ Every prospective resolⁿ applicant in pro. list

→ Every prospective Resolⁿ applicant who has contested the decision of the R. pro against its Non-inclusion in the provisional List.

→ The request for resolⁿ plan shall allow prospective resolⁿ applicant a min. 30 days to submit a resolⁿ plan. - It may extend.

→ It shall not require any non refundable deposit for submission of or along with R-plan.

→ It require a resolⁿ applicant in case its resolⁿ plan is approved under sec. 30(4), to provide a performance security. and such performance security shall stand forfeited if the resolⁿ applicant of such plan after its approval by AA fails to implement or contribute to the failure of implementation of that plan.

→ Any modifⁿ in the request for Resolⁿ plan or the evaluation matrix issued shall be deemed to be a fresh issue. and such modification shall not be made more than once.

→ If R. pro does not receive a Resolⁿ plan in response to the request, he may, with the approval of CoC → issue request for resolⁿ plan for sale of one or more assets of CD

→ If R. plan is received but they are not satisfactory → the R. prof with the approval of CoC reissue request for resolⁿ plan. to all prospective resolⁿ applicant in final list

CRUX of Reg. 36 A

R. Prof. → Invtⁿ of EOI [St-1] → R. applicant
60 Days - comm of CIRP

R. applicant → R. Prof.: EOI - W - 15 Days from invitⁿ of EOI [St-2]

R. Prof. → [St-3] within 10 Days from EOI → Provisional List → 5 Days

R. applicant → objections → 10 Days from objection [St-6] → Final List

objections - - [St-4] - - → 5 Days

Final List → 5 Days [St-7] → Info memo / Eval. mat. / Req. R. Plan → Every Applicant

Regulation - 36C

↓

Strategy for marketing of Assets of CD

↓

If the Assets of the corporate Debtor.

↓

Assets > 100 cr - Mandatory to prepare strategy for marketing

Assets ≤ 100 cr - optional.

→ Decision of implementing such strategy along with its cost shall be subject to approval of committee of creditors.

Regulation - 37. → Measures for Resolⁿ → insolv

→ Transfer of all or part of the assets of the CD to one or more person
→ Restructuring of the C.D by way of merger, Amalgamation, Demerger
→ substantial acquisition of shares of the CD
→ Reduction in the amount payable to creditors.
→ Extension of a maturity date or a change in int. rate or other terms of a debt
→ change in portfolio of goods or services produced or rendered by CD.
→ change in technology used by CD
→ obtaining necessary approval from central or state Govt and other authorities.

Regulation - 38

Mandatory content of Resol^n plan.

→ The amount payable under resolution plan to operational and financial creditor of co-debtor.

→ A statement as to how it has dealt with the interest of all stakeholders incl. FC & OC

→ A statement giving details if the resol^n applicant or any of its related party has failed to implement or contributed to the failure of implementation of any other resol^n plan approved by AA at any time in the past.

→ Terms of the plan and its implementation schedule.

→ Management and control of the business of the CD

→ Adequate means for supervising its implementation.

→ Manner in which proceedings with respect to the avoidance transaction of CD will be pursued after the approval of the R. Plan and the manner in which the proceed. from such proceed. shall be distributed.

→ A Resol^n plan shall demonstrate that it addresses the cause of default, is feasible and viable and resol^n applicant has capacity to implement the same.

→ A resol^n plan should have provision for its effective implement^n approvals required and the timeline for the same.

Amendment

- Regulatory Fee - IBBI

    1] 0.25% of Realisable value [if R.V. > Liquid^n value]

    2] 1% of cost for hiring professionals.

Section - 29A

Person not eligible to be Resoln app.

Following person shall not be eligible to submit a Resoln plan if such person or any other person acting jointly or in concert with such person is :

- An undischarged insolvent.
- A willful defaulter.
- His account or an account of CD under the management and control of such person or of whom such person is a promoter, classified as Non-Performing Asset and at least a period of one year has lapsed from the date of such classification till the date of comm. of CIRP.

  However such person is eligible to submit R. plan if such person makes payment of all overdue amounts with interest thereon and charges relating to NPA before submission of Resolution plan.

  Provision of this clause not apply to a resolution applicant where such applicant is a financial entity and not related party of CD.

- Has been convicted for any offence — punishable with imp
  - 2 yrs - Act specified in 12th Sch
  - 7 yrs - under any Law.

  This clause shall not apply after the expiry of period of 2 years from the date of his release from imprisonment.

- Person disqualified to act as a director under the companies Act 2013
- Person prohibited by SEBI from accessing capital market.
- Has been a promoter or in the management or control of ~~CD~~ CD in which Pref. transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place
- Has executed a guarantee in favour of creditor in respect of CD and such guarantee has been invoked by creditor and remain unpaid in full or part.
- Such person is subject to any disability under any Law in a Jurisdiction outside India.
- Has a **connected person** not eligible corresponding to the above clau.
  - Any person who is the promoter or in the management or control of the Resolution applicant.
  - P/management or control of the business of the CD during the implementation of the Resoln plan.
  - Has a connected person not eligible corresponding to above mentioned clauses.

Section 30 - Submission of Resolution Plan.

Doc. accomp. Resoln plan

Affidavit for eligibility U/S 29A.

Modification in R. Plan
- allowed but not more than once.
- Use a challenge mechanism to enable Resoln applicant to improve their plans.

Sec. 30(2) - D.P.

→ Resoln prof. shall examine each Resoln plan received by him to confirm that :-

a) Each Resoln plan provide for the payment of CIRP cost in the manner specified by board in priority of other debt of corporate debtor.

b) Provides for the payment of debts of ~~FIr~~ operational crediter in such manner as may be specfi by board but not less than:

i) The amount paid to such creditors in the event of Liquian of corporate debtor.

ii) The amount that would have been paid to such creditor if the amount to be distributed under resoln plan had been distributed in accordance order of priority in S53(1)

whichever is higher.

→ ii) Each Resolution plan shall provide for the payment of debts of FC which shall not be less than the amount to be paid to such credir in accordance with sec. 53(1) in the event of Liquidation of CD.

→ c) Provide for the management of the affair of CD after approval of Resoln plan.

→ d) The implementation and supervision of Resolution Plan.

→ e) does not contravene any of the provision of the Law.

→ f) conforms to such other requirements as may be specified.

Regulation - 39.

The R. Prof. shall submit all Resol^n plans that comply with the provision of code → CoC.

→ committee shall:

- Evaluate the Resol^n plan as per evaluation matrix.
- Records its deliberation on the feasibility and viability of Resol^n plan.
- Vote on all such Resolution plan simultaneously.

CoC shall not consider any Resol^n plan if →

- Resol^n plan is received after the time as specified by committee
  or
- Received from a person who does not appear in the final list of R. af applicants
  or
- If plan does not comply with the provision of sec. 30 (2)

- Where only one R.P. is put to vote, it shall be considered approved if it receive requisite votes (66%)
- Where two are more plans are put to vote simultaneously, the the R. plan which receive highest vote, but not less than requisite vote shall be approved.
- Where two or more Resol^n plan receives equal votes but not less than requisite votes. the committee shall approve any one of them as per tie breaker formula.
- Where None of the R. plan w receives requisite vote the the committee shall again vote on the R. plan that receive highest vote sub to timelines under code

The RP shall endevour to submit the resol^n plan approved by the CoC to the AA at least 15 days before the maximum period of completion CoC along with a compliance certificate in Form H and the evidence of receipt of performance security. as required under Reg. 36B (4A)

Section - 31

Approval of Resolⁿ Plan by AA

(1) Approval of R. Plan by AA

- AA approve the plan if AA is satisfied the R. Plan approved by CoC meets the requirement of sec. 30(2)
- R. Plan so approved shall be binding on the CD and its employees, mem., crs incl. CG/SG or any local autho. to whom a debt in respect of payment of dues arising under any law for time being in force.
- AA shall before passing an order satisfy that R. plan has provision of its eff. implementation.

(2) Rejection of R. Plan by AA

- where AA is satisfied that R. Plan does not confirm to the requirement referred to in sub sec. (1) it may by an order reject the R. Plan.

(3) After the approval of Plan

- Moratorium order passed by AA
- R.P. $\xrightarrow[\text{Records of CIRP}]{}$ Board (IBBI)

(4) Duty of Resolution Applicant to obtain necessary approval

- obtain necessary approval req. under any law for time being in force within one year from the date of approval of AA

  or

  within a period as provided in the law whichever is later
- If plan contains provision for combination as ref. in sec. 5 of the competition Act, 2002, → Approval of CCI is req. prior to approval of CoC.

→ The Resolⁿ Prof. shall within 15 days of the order of the AA, intimate each claimant the principle or formule as the case may be for the payment of debt under such resolⁿ plan.

Section 32 - Appeal

Appeal from an order approving the R. pro shall be in the manner and the ground laid down below :-

- The CIRP cost have not been provided for repayment in priority to all other debts.
- There has been material irregularity in exercise of the powers by resolution professional during the CIRP
- The approved Resolution plan is contravention of the provisions of ~~the~~ any law for the time being in force.
- The debt owed to operational creditors of the CD have not been provided for in there plan in the manner - Board
- The resolution plan does not comply with any other criteria specified by board.

Section - 32A

Liability for prior offences.

- The liability of the CD for an offence committed prior to the comm. of CIRP shall cease, and the CD shall not be prosecuted for such an offence from the date the Resolⁿ plan has been approved by AA U/s 31.
- If the Resolution plan results in the change in the management or control of the CD to a person who was not.
  - A promoter or in the management or control of the CD or a related party of such person.
  - A person with regard to whom the relevant investigating authority has on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence and has submitted or filed a report or a complaint to the relevant statutory authority
- No Action shall be taken against the property of the CD in relation to an offence committed prior to the commencement of CIRP of CD where such property is covered under a resolution plan approved by AA U/S 31