

The Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019

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The Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019¹

In exercise of the powers conferred by sub-section (1) and clauses (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb) and (zc) of sub-section (2) of Section 239 read with clause (e) of Section 2 and sub-section (2), clauses (c) and (e) of sub-section (14) and clause (e) of sub-section (15) of Section 79 of the **Insolvency and Bankruptcy Code, 2016** (31 of 2016), the Central Government hereby makes the following rules, namely—

1. Short title and commencement.—(1) These rules may be called the **Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019**.

(2) They shall come into force from the 1st day of December, 2019.

2. Application.—These rules shall apply to matters relating to bankruptcy of personal guarantors to corporate debtors.

3. Definitions.—(1) In these rules, unless the context otherwise requires,—

(a) “Adjudicating Authority” means—

(i) for the purpose of Section 60, the National Company Law Tribunal constituted under Section 408 of the Companies Act, 2013 (18 of 2013); or

(ii) in cases other than sub-clause (i), the Debt Recovery Tribunal established under sub-section (1-A) of Section 3 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993);

(b) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);

(c) “electronic form” shall have the meaning assigned to it in clause (r) of Section 2 of the Information Technology Act, 2000 (21 of 2000);

(d) “electronic means” means an authorised and secured computer programme which is capable of producing confirmation of sending communication to the participant entitled to receive such communication at the last electronic mail address provided by such participant and keeping record of such communication;

(e) “form” means a form appended to these rules;

1. Ministry of Corporate Affairs, Noti. No. G.S.R. 855(E), dated November 15, 2019 and published in the Gazette of India, Extra., Part II, Section 3(i), dated 15th November, 2019, pp. 53-73, No. 672

- (f) “guarantor” means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part;
- (g) “section” means section of the Code;
- (h) “serve” means sending any communication by any means, including registered post, speed post, courier or electronic means, which is capable of producing or generating an acknowledgement of receipt of such communication:

Provided that where a document cannot be served in any of the modes, it shall be affixed at the outer door or some other conspicuous part of the house or building in which the addressee ordinarily resides or carries on business or personally works for gain.

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

4. Relatives.—For the purposes of clause (ii) of Explanation to sub-section (2) of Section 79, the manner of relationship shall mean the manner as provided in the Explanation to clause (24-A) of Section 5.

5. Excluded assets.—For the purposes of sub-section (14) of Section 79,—

- (a) the value of unencumbered personal ornaments under clause (c) of the said sub-section shall not exceed one lakh rupees;
- (b) the value of unencumbered single dwelling unit owned by the debtor under clause (e) of the said sub-section shall not exceed,—
 - (i) in the case of dwelling unit in an urban area, twenty lakh rupees;
 - (ii) in the case of dwelling unit in rural area, ten lakh rupees.

Explanation.—For the purposes of this rule,—

- (a) “rural area” shall have the same meaning as assigned to it in clause (o) of Section 2 of the National Rural Employment Guarantee Act, 2005 (42 of 2005);
- (b) “urban area” means any area other than rural area.

6. Application by guarantor.—(1) The application under sub-section (1) of Section 122 shall be submitted in Form A, along with an application fee of two thousand rupees.

(2) The guarantor shall serve forthwith a copy of the application referred to in sub-rule (1) to every creditor and the corporate debtor for whom the guarantor is a personal guarantor.

7. Application by creditor.—(1) The application under sub-section (1) of Section 123 shall be submitted in Form B, along with a fee of two thousand rupees.

(2) The creditor shall serve forthwith a copy of the application referred to in sub-rule (1) to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor.

(3) In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.

8. Confirmation or nomination of insolvency professional.—(1) For the purposes of sub-section (2) of Section 125 and sub-section (5) of Section 145, the Board may share the database of the insolvency professionals, including information about disciplinary proceedings against them, with the Adjudicating Authority from time to time.

(2) For the purposes of sub-section (4) of Section 125, sub-section (3) of Section 146 and sub-section (3) of Section 147, the Board may share a panel of insolvency professionals, who may be appointed as bankruptcy trustee, with the Adjudicating Authority.

9. Public notice.—(1) The Adjudicating Authority shall issue a public notice inviting claims from all creditors of the bankrupt, under clause (b) of sub-section (1) of Section 130, in Form C.

(2) The Adjudicating Authority may direct the bankruptcy trustee to issue the public notice referred to in sub-rule (1), instead of issuing such notices itself.

10. Notice to creditors.—(1) The Adjudicating Authority shall send notices to the creditors as per clause (a) of sub-section (1) of Section 130, in Form D.

(2) The Adjudicating Authority may direct the bankruptcy trustee to issue the notices referred to in sub-rule (1), instead of issuing such notices itself.

11. Statement of financial position.—The statement of financial position referred to in sub-section (2) of Section 129 shall be submitted by the bankrupt, in Form E.

12. Claim with proof.—(1) A creditor shall submit a claim with proof to the bankruptcy trustee on or before the last date mentioned in the public notice, in Form F.

(2) Form F shall be submitted by the creditor through electronic means or by registered post or speed post or courier.

(3) A creditor who fails to submit claim with proof as per sub-rule (1) within the time stipulated in the public notice, may submit such proof to the bankruptcy trustee till the final date referred to in sub-section (2) of Section 176.

(4) The creditor shall bear the costs relating to the proof of claim.

13. Notice of dividend.—(1) The notice of dividend as per clause (a) of sub-section (1) of Section 176 shall contain the following particulars—

- (a) the date on which the dividend is proposed to be distributed;
- (b) the list of creditors who shall be entitled to a dividend;
- (c) the amount of dividend for each creditor under clause (b);
- (d) request for any details required from the creditors for the distribution of dividend, and the last date for receipt of such information;
- (e) the last date by which the creditors must establish their claim against the estate with the bankruptcy trustee; and

(f) a statement confirming that no further dividends shall be declared.

(2) The notice under clause (b) of sub-section (1) of Section 176 shall provide the reasons for not declaring dividend.

(3) The notice of dividend under sub-section (1) Section 176 shall be sent thirty days prior to the date specified for the distribution of dividend.

14. Copy of application.—On the appointment of the bankruptcy trustee, nominated by the Board, under sub-section (5) of Section 125 by the Adjudicating Authority, a copy of the application as referred to in Rule 6 and Rule 7, if not provided earlier, shall be provided to such bankruptcy trustee by the Adjudicating Authority within three days of the appointment.

15. Restriction on bankrupt.—The restriction on the bankrupt under clause (d) of sub-section (1) of Section 141 shall be applicable for any financial or commercial transaction of one lakh rupees and above.

16. Filing of application and documents.—(1) Till such time, rules of procedure for conduct of proceedings under the Code are notified, the applications under Rules 6 and 7 shall be filed and dealt with by the Adjudicating Authority in accordance with—

(i) Rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 made under Section 469 of the Companies Act, 2013 (18 of 2013); or

(ii) Rule 3 of the Debt Recovery Tribunal (Procedure) Rules, 1993 made under Section 36 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) and Regulations 3, 4, 5 and 11 of the Debt Recovery Tribunal Regulations, 2015 made under Section 22 of the Recovery of Debts and Bankruptcy Act, 1993, as the case may be.

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

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

[Ed.: For Forms see SCC OnLine]
