

The Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019

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The Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019¹

In exercise of the powers conferred under Section 227 read with clause (zk) of sub-section (2) of Section 239 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 (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019**.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. Application.—These rules shall apply to such financial service providers or categories of financial service providers, as may be notified by the Central Government under Section 227, from time to time, for the purpose of their insolvency and liquidation proceedings under these rules.

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

- (a) “Administrator” means an individual appointed by the Adjudicating Authority under sub-clause (iii) of clause (a) of Rule 5, to exercise the powers and functions of the insolvency professional, interim resolution professional, resolution professional or the liquidator for the purpose of insolvency and liquidation proceedings of a financial service provider;
- (b) “Advisory Committee” means the Committee constituted by the appropriate regulator in accordance with clause (c) of Rule 5 of these rules;
- (c) “appropriate regulator” means the financial sector regulator, as may be notified by the Central Government under Section 227, for a category of financial service providers;
- (d) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
- (e) “Form” means a Form appended to these rules; and
- (f) “identification number” means the corporate identity number or the limited liability partnership identification number, as the case may be, of a financial service provider.

(2) The 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.

1. Ministry of Corporate Affairs, Noti. No. G.S.R. 852(E), dated November 15, 2019 and published in the Gazette of India, Extra., Part II, Section 3(i), dated 15th November, 2019, pp. 8-12, No. 670

4. General modifications.—For the purposes of these rules, in all the provisions relating to insolvency and liquidation proceedings under the Code,—

- (i) for the expression “corporate debtor” wherever they occur, shall mean “financial service provider”; and
- (ii) for the expressions “insolvency professional”, “interim resolution professional”, “resolution professional” or “liquidator”, wherever they occur, shall mean “administrator”.

5. Corporate Insolvency Resolution Process of financial service providers.— The provisions of the Code relating to the Corporate Insolvency Resolution Process of the corporate debtor shall, mutatis mutandis apply, to the insolvency resolution process of a financial service provider subject to the following modifications, namely—

(a) Initiation of Corporate Insolvency Resolution Process—

- (i) no corporate insolvency resolution process shall be initiated against a financial service provider which has committed a default under Section 4, except upon an application made by the appropriate regulator in accordance with Rule 6;
- (ii) the application under sub-clause (i) shall be dealt with in the same manner as an application by a financial creditor under Section 7, subject to clause (iii); and
- (iii) on the admission of the application, the Adjudicating Authority shall appoint the individual proposed by the appropriate regulator in the application filed under sub-clause (i) of clause (a) of Rule 5, as the Administrator.

(b) Moratorium— Save as provided in Section 14,—

- (i) an interim moratorium shall commence on and from the date of filing of the application under clause (a) till its admission or rejection; and
- (ii) the license or registration which authorises the financial service provider to engage in the business of providing financial services shall not be suspended or cancelled during the interim-moratorium and the corporate insolvency resolution process.

Explanation.— For the purposes of this clause, “interim moratorium” shall have the effect of the provisions of sub-sections (1), (2) and (3) of Section 14.

(c) Advisory Committee—

- (i) the appropriate regulator may, where deemed necessary, constitute an Advisory Committee, within 45 days of the insolvency commencement date, to advise the Administrator in the operations of the financial service provider during the corporate insolvency resolution process;

- (ii) the Advisory Committee shall consist of three or more Members, who shall be persons of ability, integrity and standing, and who have 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;
 - (iii) the terms and conditions of the Members of the Advisory Committee and the manner of conducting meetings and observance of rules of procedure shall be such as may be determined by the appropriate regulator;
 - (iv) the compensation paid to the Members of the Advisory Committee shall be part of the insolvency resolution process costs;
 - (v) the Administrator shall chair the meetings of the Advisory Committee.
- (d) Resolution plan—
- (i) the resolution plan shall include a statement explaining how the resolution applicant satisfies or intends to satisfy the requirements of engaging in the business of the financial service provider, as per laws for the time being in force;
 - (ii) upon approval of the resolution plan by the committee of creditors under sub-section (4) of Section 30, the Administrator shall seek 'no objection' of the appropriate regulator to the effect that it has no objection to the persons, who would be in control or management of the financial service provider after approval of the resolution plan under Section 31;
 - (iii) the appropriate regulator shall without prejudice to the provisions contained in Section 29-A, issue 'no objection' on the basis of the 'fit and proper' criteria applicable to the business of the financial service provider;
 - (iv) where an appropriate regulator does not refuse 'no objection' on an application made under clause (ii) within forty five working days of receipt of such application, it shall be deemed that 'no objection' has been granted.

6. 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 clause (a) of Rule 5 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 made under the provisions of the Companies Act, 2013.

(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 under sub-clause (i) of clause (a) of Rule 5 shall be made in Form 1 and accompanied by—

- (a) a fee of twenty five thousand rupees;
- (b) a written consent and declaration in accordance with Form 2 from the proposed Administrator; and
- (c) other documents and records as specified in Form 1.

(4) The application and accompanying documents shall be filed in electronic form, as and when such facility is made available 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.

(5) 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.

(6) The Adjudicating Authority may permit withdrawal of an application filed under sub-clause (i) of clause (a) of Rule 5 before its admission on a request made by the applicant.

7. Liquidation Process.—The provisions of the Code relating to the liquidation process of the corporate debtor shall, mutatis mutandis apply, to the liquidation process of a financial service provider subject to 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 suspended or cancelled 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.

8. Voluntary Liquidation Process.—The provisions of the Code relating to voluntary liquidation process of the corporate debtor shall, mutatis mutandis apply, to the voluntary liquidation process of a financial service provider subject to the following modifications, namely—

- (a) the financial service provider shall obtain prior permission of the appropriate regulator for initiating voluntary liquidation proceedings under Section 59 of the Code;
- (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.

9. Insolvency Professional.—(1) For the purpose of these rules, only an Administrator proposed by the appropriate regulator and 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.

(2) An 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 financial service provider.

(3) The appointment or replacement of the Administrator may be made by the Adjudicating Authority on an application made by the appropriate regulator in this behalf.

10. Assets of third parties, etc.—(1) For removal of doubts, it is clarified that the provisions of clause (b) of Rule 5 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 only for the purpose of dealing with them in the manner, as may be notified by the Central Government under Section 227.

FORM 1

[See sub-clause (i) of clause (a) of Rule 5]

APPLICATION BY APPROPRIATE REGULATOR TO INITIATE INSOLVENCY RESOLUTION PROCESS UNDER THE CODE

[Under Rule 5 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,

[Name of appropriate regulator], 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

1	Name of appropriate regulator	
2	Address 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)	

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	

PART III

PARTICULARS OF THE PROPOSED ADMINISTRATOR

1	Name, address and e-mail address of the Administrator	
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PART IV

PARTICULARS OF DEFAULT

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Yours sincerely,

Signature of person authorised to act on behalf of the * [appropriate regulator]
Name in block letters
Position with or in relation to the * [appropriate regulator]
Address of person signing

Instructions

Please attach the following to this application:

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- * Corrected for "financial creditor" by Noti. No. S.O. 4280(E), dated 27-11-2019.
 - * Corrected for "financial creditor" by Noti. No. S.O. 4280(E), dated 27-11-2019.

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

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

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

FORM 2

[See sub-clause (b) of sub-rule (3) of Rule 6]

WRITTEN COMMUNICATION BY THE ADMINISTRATOR

[Under Rule 6 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,

In accordance with Rule 6 of the Insolvency and Bankruptcy (Insolvency Resolution and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, I [name of the Administrator], hereby:

- (i) agree to appointment as Administrator 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 do not have any conflict of interest in this matter/I have the following interests in the matter.
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