Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Connaught Place, New Delhi - 110001

CIRCULAR

No. IBBI/IPE/64/2024 **1st February 2024**

To,
All Registered Insolvency Professionals
All Recognised Insolvency Professional Entities
All Registered Insolvency Professional Agencies
(By mail to registered email addresses)

Dear Madam/ Sir,

Subject: Measures for rationalisation of the regulatory framework of Insolvency Professional Entities

In order to enhance the efficiency of the insolvency resolution processes, in September 2022, the insolvency professional entities (IPEs), which can be a company, limited liability partnership, registered partnership firm, were allowed to carry on the activities of an insolvency professional (IP). This was envisaged to leverage the paraphernalia of their resources and experience in the insolvency ecosystem by virtue of their constitutional structure. The existing regulatory architecture was kept unchanged to provide adequate time for implementation of the said reform. Prior to this amendment, IPEs were allowed to provide only support services to IPs.

2. Based on the feedback received from stakeholders and experiences encountered during implementation, it is considered imperative to provide clarity on few areas to facilitate IPEs to undertake their expanded role. These issues and clarification thereupon have been elaborated in ensuing paragraphs:

3.1. Clarification in relation to disciplinary proceedings in case of an IP which is an IPE

3.1.1. Sections 217 to 220 of Chapter VI of the Insolvency and Bankruptcy Code, 2016 (Code) read with the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations), IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 and IBBI (Inspection and Investigation) Regulations, 2017 provide the process of grievance, complaints handling and disciplinary proceedings. The IP Regulations also provide for the continued eligibility requirements for recognition as an IPE, its liability and derecognition.

3.1.2. Since, an IPE acting as IP would have multiple individuals as its partners or directors, as the case may be, a need is felt to clarify on the initiation of disciplinary proceeding in case of any contravention in relation to an assignment undertaken by an IP which is an IPE.

3.1.3. ***Clarification****: It is hereby clarified that in case the assignment is undertaken by the IP, which is an IPE, the show-cause notice under regulation 11 of the IBBI (Inspection and Investigation) Regulations, 2017 shall be issued to:*

(a) its partner or director, as the case may be, who is an IP and was authorised to sign and act on behalf of it for the respective assignment; and/or

(b) the IPE if in the opinion of the Board, there are either repeated instances of contravention against one or more partners or directors of the IPE or instance of systemic failure on the part of such IPE.

3.2. Clarification on applicability of limit on number of Assignments to an IP which is an IPE

3.2.1. Clause 22 of Code of Conduct specified in First Schedule to IP Regulations imposes a restriction on the number of assignments that can be undertaken by an IP. This restriction has been envisaged for IPs who are individuals.

3.2.2. With the introduction of provisions allowing IPE to act as IP, it is not considered prudent to apply any limit on the number of assignments that may be undertaken by such IPE at this nascent stage.

3.2.3. ***Clarification:*** *It is hereby clarified that clause 22 of Code of Conduct specified in First Schedule to IP Regulations does not apply to an IP which is an IPE.*

3.3. Clarification on applicability of fee structure to an IP which is an IPE

3.3.1. Regulation 34B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) stipulates the minimum fixed fee structure and a performance-linked incentive fee for the IPs in a corporate insolvency resolution process (CIRP). This provision has been envisaged for IPs who are individuals.

3.3.2. With the introduction of provisions allowing IPE to act as IP, it is considered prudent that IPEs have an expanded role, and their fee should be market-determined at this juncture. Also, given their institutional framework, IPEs are better placed to negotiate their fees commensurate with their pool of in-house resources and diverse range of services offered by them as compared to an individual IP.

3.3.3. ***Clarification:*** *It is hereby clarified that regulation 34B of CIRP Regulations does not apply to an IP, which is an IPE.*

4. This circular is being issued in exercise of the powers conferred under the provisions of section 196 of the Insolvency and Bankruptcy Code, 2016.

Yours faithfully

Sd/-

(B. Sankaranarayanan)

General Manager

Email: b.sankar@ibbi.gov.in