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**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION**

New Delhi, the 11th October, 2018

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) (AMENDMENT) REGULATIONS, 2018

IBBI/2018-19/GN/REG35. In exercise of the powers conferred by sections 196, 203 and 205 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations to amend the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 namely: -

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2018.

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

2. In the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, in regulation 2, in sub-regulation (1), clause (a) shall be renumbered as clause (aa) thereof and before clause (aa) as so renumbered, the following clause shall be inserted, namely:-

‘(a) “Board” means the Insolvency and Bankruptcy Board of India established under section 188 of the Code;’.

3. In the principal regulations, for regulation 5, the following regulations shall be substituted, namely: -

“5. Composition of the Governing Board.- (1) The Governing Board shall consist of-

- (a) managing director;
- (b) independent directors; and
- (c) shareholder directors:

Provided that the Governing Board shall have minimum seven directors.

(2) The managing director shall not be considered either an independent director or a shareholder director.

(3) Any employee of an insolvency professional agency may be appointed as a director on its Governing Board in addition to the managing director, but such director shall be deemed to be a shareholder director.

(4) More than half of the directors shall be persons resident in India at the time of their appointment, and at all times during their tenure as directors.

- (5) The number of independent directors shall not be less than the number of shareholder directors:
Provided that no meeting of the Governing Board shall be held without the presence of at least one independent director.
- (6) An independent director shall be an individual-
- (a) who is a person of ability and integrity;
 - (b) who has expertise in the field of finance, law, management or insolvency;
 - (c) who is not an insolvency professional;
 - (d) who is not a relative of the directors of the Governing Board;
 - (e) who had or has no pecuniary relationship with the insolvency professional agency, or any of its directors, or any of its shareholders holding more than ten per cent. of its share capital, during the immediately preceding two financial years or during the current financial year;
 - (f) who is not a shareholder of the insolvency professional agency;
 - (g) who is not a member of the Board of Directors of any of the shareholders holding more than ten per cent. of the share capital of the insolvency professional agency.
- (7) An independent director shall be nominated by the Board from amongst the list of names proposed by the insolvency professional agency.
- (8) An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier.
- (9) The second term referred to in sub-regulation (8) may be subject to a satisfactory performance review of the first term by the Governing Board.
- (10) A cooling off period of three years shall be applicable for an independent director to become a shareholder director in the same or another insolvency professional agency.
- (11) Not more than one fourth of the directors shall be insolvency professionals.
- (12) The directors shall elect an independent director as the Chairperson of the Governing Board.
- (13) A director, who has, any interest, direct or indirect, pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Governing Board or any of its Committees, shall as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Governing Board or the Committee, as the case may be, and the director shall not take part in any deliberation or decision of the Governing Board or the Committee with respect to that matter.
- 5A. Managing director.-** (1) An insolvency professional agency shall, subject to the guidelines issued by the Board from time to time, determine the qualification and experience, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection and appointment of the managing director, subject to the condition that-
- (a) an individual shall be selected as managing director through an open advertisement in all editions of at least one national daily newspaper;

(b) an individual at the time joining as managing director shall not be above the age of fifty-five years, which may be relaxed by the Governing Board up to sixty years, after recording reasons therefor; and

(c) an individual shall not serve as managing director after he attains the age of sixty-five years.

(2) The appointment of an individual as the managing director shall be for a tenure of not less than three years but not exceeding five years.

(3) An individual may serve as managing director for a maximum of two terms.

(4) The process of appointment for the second term of an individual as managing director shall be conducted afresh.

(5) The appointment and remuneration payable to the managing director shall be approved by a compensation committee constituted by the Governing Board.

(6) The appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the Board.

(7) The managing director shall be liable for removal or termination of services by the Governing Board, with the prior approval of the Board, for failure to give effect to the directions, guidelines and other orders issued by the Governing Board or the Board, or the rules, the articles of association or bye-laws of the insolvency professional agency or on the ground of misconduct or incapacity to continue in office.

(8) The Board may *suo motu* remove or terminate the services of the managing director, if it deems fit, in the interest of stakeholders of the insolvency resolution process or in the public interest, after giving a reasonable opportunity of being heard.

(9) The managing director shall be an *ex-officio* member of Membership Committee, Monitoring Committee, Grievance Redressal Committee and Disciplinary Committee.

5B. Compliance.- Every insolvency professional agency registered as on the date of commencement of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2018, shall comply with regulations 5 and 5A within one year from the date of such commencement.”.

Dr. M. S. Sahoo
Chairperson
Insolvency and Bankruptcy Board of India

Note: The Insolvency and Bankruptcy Board of India (Model Bye–Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2016 were published vide notification No. IBBI/2016-17/GN/REG001 on 22nd November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 421 dated 21st November, 2016 and these have not been amended so far.