

**Most Immediate**

**No. 391-78/2016-STG-III  
Government of India  
Ministry of Communications  
Department of Telecommunications**

419, Sanchar Bhawan, 20, Ashoka Road,  
New Delhi – 110001, Dated 23.08.2016

To

1. CMD, BSNL
2. CMD, MTNL
3. CMD, BBNL
4. Sr. DDG, TEC

**Subject: Requirement of ITS officers in Insolvency and Bankruptcy Board of India, Ministry of Corporate Affairs..**

**Sir,**

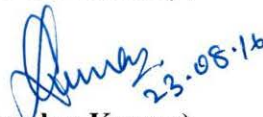
I am directed to refer to the subject mentioned above and to enclose a copy of D.O. letter dated 09.08.2016 from Secretary, Ministry of Corporate affairs regarding requirement of ITS officers at various levels in Insolvency and Bankruptcy Board of India, Ministry of Corporate Affairs.

2. It is requested that applications of willing ITS officers complete in all respects as mentioned below, may be forwarded to the undersigned latest by 29<sup>th</sup> August, 2016:

- (i) Bio-data of officers duly certified by the administrative authority, maintaining the service book.
- (ii) A certificate that the officer has submitted his/her Annual Property Return for the year 2015 may also be enclosed.
- (iii) Photocopies of the ACRs for the last five years duly certified by an officer not below the rank of SDE/DET or self-attested by the applicant. Without the same, application will not be entertained and will be returned.

Encl.: As above.

Yours faithfully,

  
(Chandan Kumar)  
SO(STG-III)  
Tel:011-23036876

**Copy to:**

Director (IT) with a request to upload the circular on the DoT website.

तपन राय  
सचिव  
TAPAN RAY  
Secretary



भारत सरकार  
कारपोरेट कार्य मंत्रालय  
नई दिल्ली  
Government of India  
Ministry of Corporate Affairs  
New Delhi

D.O.No. 30/5/2016-Insolvency

9th August, 2016

My Dear Deepak,

The Insolvency and Bankruptcy Code, 2016 has been notified on 28th May, 2016. This Ministry has been asked to initiate the preparatory activities for implementing the Code immediately so that the provisions relating to corporate insolvency could be brought into force in the shortest possible time.

2. The first priority is to establish the Insolvency and Bankruptcy Board of India (the Board), which is an essential requirement for notifying the other provisions of the Code. Sections 188 - 198 of the Code deals with the Board [copy attached]. With a view to provide the Board with adequate and competent officers at the time of its notification, which is expected in 2-3 months' time, it has been decided that officers on a temporary secondment/deputation basis for a period of one year or more to the Board may be sought from various Departments/agencies.

3. The powers and functions of the Board are laid down in Sections 196-198 of the Code. The Board will have its head office in Delhi/National Capital Region. It is envisaged that the Board will be organized in a manner similar to SEBI. The salary, allowances and other terms and conditions for the officers and staff will be similar to those of SEBI/RBI. The Board will require officers at the level of Executive Director, Chief General Manager, General Manager and Deputy General Manager to look after the Departments/Divisions within the Board in the following broad areas:-

- i. Drafting Regulations and Regulation of Insolvency Professionals (IPs), Insolvency Professional Agencies (IPAs) [to oversee the regulatory framework, including for registration of IPs and IPAs etc.].
- ii. Legal Affairs [which would look after the policy and regulatory matters relating to Insolvency/restructuring and liquidation process, as well as for the IPAs and IPs].
- iii. General Administration [which would look after Budgeting, Expenditure & Accounts, Establishment, Infrastructure, etc.].



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- iv. Information Technology and Data Analytics [which would look after the regulatory framework for Information Utilities and their establishment, in-house Information Technology and Analytics requirements of the Board].
  - v. Enforcement & Surveillance [which would look after enforcement functions under the Code, for the IPs, IPAs and IUs].
  - vi. Other Support functions, including for the Chairperson and Whole time Members.
4. This is an exciting opportunity for building a modern regulator of global standards for resolution of insolvency, which will contribute substantially towards improving the business environment in the country as well as facilitate 'ease of doing business' in accordance with the agenda set by the Hon'ble Prime Minister. Putting in place an efficient system will also help in further development of debt markets as well as making the banking sector more robust.
5. Since there are officers in the ITS cadre who can be spared, I would request you to select about 4-5 ITS officers, at various levels as mentioned above, having the relevant experience and seconding/deputing them to the Board for a period of one year or more. I will request you to give the names of such officers **latest by 31<sup>st</sup> August, 2016**. In case any clarifications or further information is required, I would be pleased to personally meet you along with my officers. While Shri Amardeep Singh Bhatia, Joint Secretary, who is the nodal officer dealing with the subject matter in this Ministry, can also be accessed for further details.

*With Best regards*

Yours sincerely,

*Tapán Ray*  
(Tapán Ray)

**Encl: As above.**

Shri J.S.Deepak  
Secretary, Department of Telecommunications  
Ministry of Communications & IT  
Sanchar Bhawan  
20, Ashoka Road  
New Delhi 110001.

(f) has absconded or attempts to abscond after the bankruptcy commencement date, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to five lakh rupees, or with both;

*Explanation.*—For the purposes of this clause, a bankrupt shall be deemed to have absconded if he leaves, or attempts to leave the country without delivering the possession of any property which he is required to deliver to the bankruptcy trustee under section 156.

Punishment  
for certain  
actions.

**187.** If a bankruptcy trustee,—

(a) has fraudulently misapplied, retained or accounted for any money or property comprised in the estate of the bankrupt; or

(b) has wilfully acted in a manner that the estate of the bankrupt has suffered any loss in consequence of breach of any duty of the bankruptcy trustee in carrying out his functions under section 149,

he shall be punishable with imprisonment for a term which may extend to three years, or with fine, which shall not be less than three times the amount of the loss caused, or likely to have been caused, to persons concerned on account of such contravention, or with both:

Provided that where such loss or unlawful gain is not quantifiable, the total amount of fine imposed shall not exceed five lakh rupees:

Provided further that the bankruptcy trustee shall not be liable under this section if he seizes or disposes of any property which is not comprised in the estate of the bankrupt and at that time had reasonable grounds to believe that he is entitled to seize or dispose that property.

#### PART IV

#### REGULATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES

#### CHAPTER I

#### THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

Establishment  
and  
incorporation  
of Board.

**188.** (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Code, a Board by the name of the Insolvency and Bankruptcy Board of India.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Code, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The head office of the Board shall be at such place in the National Capital Region, as the Central Government may, by notification, specify.

*Explanation.*—For the purposes of this section, the expression "National Capital Region" shall have the same meaning as assigned to it in clause (f) of section 2 of the National Capital Region Planning Board Act, 1985.

(4) The Board may establish offices at other places in India.

2 of 1985.

Constitution  
of Board.

**189.** (1) The Board shall consist of the following members who shall be appointed by the Central Government, namely:—

(a) a Chairperson;

(b) three members from amongst the officers of the Central Government not below the rank of Joint Secretary or equivalent, one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of Law, *ex officio*;



(c) one member to be nominated by the Reserve Bank of India, *ex officio*;

(d) five other members to be nominated by the Central Government, of whom at least three shall be the whole-time members.

(2) The Chairperson and the other members shall be persons of ability, integrity and standing, who have shown capacity in dealing with problems relating to insolvency or bankruptcy and have special knowledge and experience in the field of law, finance, economics, accountancy or administration.

(3) The appointment of the Chairperson and the members of the Board other than the appointment of an *ex officio* member under this section shall be made after obtaining the recommendation of a selection committee consisting of—

(a) Cabinet Secretary—Chairperson;

(b) Secretary to the Government of India to be nominated by the Central Government—Member;

(c) Chairperson of the Insolvency and Bankruptcy Board of India (in case of selection of members of the Board)—Member;

(d) three experts of repute from the field of finance, law, management, insolvency and related subjects, to be nominated by the Central Government—Members.

(4) The term of office of the Chairperson and members (other than *ex officio* members) shall be five years or till they attain the age of sixty-five years, whichever is earlier, and they shall be eligible for reappointment.

(5) The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and members (other than the *ex officio* members) shall be such as may be prescribed.

**190.** The Central Government may remove a member from office if he—

(a) is an undischarged bankrupt as defined under Part III;

(b) has become physically or mentally incapable of acting as a member;

(c) has been convicted of an offence, which in the opinion of the Central Government involves moral turpitude;

(d) has, so abused his position as to render his continuation in office detrimental to the public interest:

Provided that no member shall be removed under clause (d) unless he has been given a reasonable opportunity of being heard in the matter.

**191.** Save as otherwise determined by regulations, the Chairperson shall have powers of general superintendence and direction of the affairs of the Board and may also exercise such other powers as may be delegated to him by the Board.

**192.** (1) The Board shall meet at such times and places, and observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be determined by regulations.

(2) The Chairperson, or if, for any reason, the Chairperson is unable to attend any meeting of the Board, any other member chosen by the members present at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority votes of the members present and voting, and, in the event of an equality of votes, the Chairperson, or in his absence, the person presiding, shall have a second or casting vote.

Removal of member from office.

Powers of Chairperson.

Meetings of Board.

Member not to participate in meetings in certain cases.

**193.** Any member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board, 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 Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter.

Vacancies, etc., not to invalidate proceedings of Board, Officers and employees of Board.

**194.** (1) No act or proceeding of the Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

(2) The Board may appoint such other officers and employees as it considers necessary for the efficient discharge of its functions in such manner as may be specified.

(3) The salaries and allowances payable to, and other terms and conditions of service of, officers and employees of the Board appointed under sub-section (2) shall be such as may be specified by regulations.

Power to designate financial sector regulator.

**195.** Until the Board is established, the Central Government may by notification, designate any financial sector regulator to exercise the powers and functions of the Board under this Code.

## CHAPTER II

### POWERS AND FUNCTIONS OF THE BOARD

Powers and functions of Board.

**196.** (1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely:—

(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;

(b) specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities;

(c) levy fee or other charges for the registration of insolvency professional agencies, insolvency professionals and information utilities;

(d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;

(e) lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;

(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;



(i) publish such information, data, research studies and other information as may be specified by regulations;

(j) specify by regulations the manner of collecting and storing data by the information utilities and for providing access to such data;

(k) collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases;

(l) constitute such committees as may be required including in particular the committees laid down in section 197;

(m) promote transparency and best practices in its governance;

(n) maintain websites and such other universally accessible repositories of electronic information as may be necessary;

(o) enter into memorandum of understanding with any other statutory authorities;

(p) issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities;

(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;

(r) conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals as may be specified by the Board;

(s) specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any regulations;

(t) make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor; and

(u) perform such other functions as may be prescribed.

(2) The Board may make model bye-laws to be adopted by insolvency professional agencies which may provide for—

(a) the minimum standards of professional competence of the members of insolvency professional agencies;

(b) the standards for professional and ethical conduct of the members of insolvency professional agencies;

(c) requirements for enrolment of persons as members of insolvency professional agencies which shall be non-discriminatory;

*Explanation.*—For the purposes of this clause, the term "non-discriminatory" means lack of discrimination on the grounds of religion, caste, gender or place of birth and such other grounds as may be specified;

(d) the manner of granting membership;

(e) setting up of a governing board for internal governance and management of insolvency professional agency in accordance with the regulations specified by the Board;

(f) the information required to be submitted by members including the form and the time for submitting such information;

(g) the specific classes of persons to whom services shall be provided at concessional rates or for no remuneration by members;

(h) the grounds on which penalties may be levied upon the members of insolvency professional agencies and the manner thereof;

(i) a fair and transparent mechanism for redressal of grievances against the members of insolvency professional agencies;

(j) the grounds under which the insolvency professionals may be expelled from the membership of insolvency professional agencies;

(k) the quantum of fee and the manner of collecting fee for inducting persons as its members;

(l) the procedure for enrolment of persons as members of insolvency professional agency;

(m) the manner of conducting examination for enrolment of insolvency professionals;

(n) the manner of monitoring and reviewing the working of insolvency professional who are members;

(o) the duties and other activities to be performed by members;

(p) the manner of conducting disciplinary proceedings against its members and imposing penalties;

(q) the manner of utilising the amount received as penalty imposed against any insolvency professional.

(3) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under this Code, the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908.

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person at any place;

(iv) issuing of commissions for the examination of witnesses or documents.

Constitution of advisory committee, executive committee or other committee.

**197.** The Board may, for the efficient discharge of its functions, may constitute advisory and executive committees or such other committees, as it may deem fit, consisting of a Chairperson and such other members as may be specified by regulations.

Condonation of delay.

**198.** Notwithstanding anything contained in this Code, where the Board does not perform any act within the period specified under this Code, the relevant Adjudicating Authority may, for reasons to be recorded in writing, condone the delay.

### CHAPTER III

#### INSOLVENCY PROFESSIONAL AGENCIES

No person to function as insolvency professional agency without valid certificate of registration.

**199.** Save as otherwise provided in this Code, no person shall carry on its business as insolvency professional agencies under this Code and enrol insolvency professionals as its members except under and in accordance with a certificate of registration issued in this behalf by the Board.