

MCA notifies Insolvency and Bankruptcy Rules, 2019

The Ministry of Corporate Affairs (MCA) has notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019. The rules provide a generic framework for insolvency and liquidation proceedings of systemically important Financial Service Providers (FSPs) other than banks. The Rules shall apply to such FSPs or categories of FSPs, as will be notified by the Central Government under section 227 from time to time in consultation with appropriate regulators, for the purpose of their insolvency and liquidation proceedings.

The special framework under Section 227 of the Code shall not apply to Banks. Separately, however, the government will notify specific categories of FSPs that do not fall under the systemically important category and shall be resolved under the normal provisions of the Code as ordinarily applicable to corporate debtors.

The Rules provide that the provisions of the Code relating to the Corporate Insolvency Resolution Process (CIRP), Liquidation Process and Voluntary Liquidation Process for a corporate debtor shall, mutatis mutandis, apply to a process for an FSP, subject to following modifications:

- i. The CIRP of an FSP shall be initiated only on an application by the appropriate regulator.
- ii. On admission of the application, the Adjudicating Authority shall appoint the individual, who has been proposed by the appropriate regulator in the application for initiation of CIRP, as the Administrator.
- iii. While conducting a proceeding of an FSP, the 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. He shall be appointed or replaced by the Adjudicating Authority on an application made by the appropriate regulator in this behalf.

- iv. The appropriate regulator may constitute an Advisory Committee of three or more experts to advise the Administrator in the operations of the FSP during the CIRP.
- v. An interim moratorium shall commence on and from the date of filing of the application for initiation of CIRP by the appropriate regulator till its admission or rejection by the Adjudicating Authority.
- vi. The provisions of interim-moratorium or moratorium shall not apply to any third-party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties.
- vii. The Administrator shall take control and custody of third-party assets or properties in custody or possession of the FSP and deal with them in the manner, to be notified by the Central Government under section 227.
- viii. The license or registration which authorises the FSP to engage in the business of providing financial services shall not be suspended or cancelled during the interim-moratorium and the CIRP.
- ix. Upon approval of the resolution plan by the Committee of Creditors, the Administrator shall seek 'no objection' from the appropriate regulator to the effect that it has no objection to the persons, who would be in control or management of FSP after approval of the resolution plan. The appropriate regulator shall issue 'no objection' on the basis of the 'fit and proper' criteria applicable to the business of the FSP without prejudice to the provision of Section 29A of the Code.
- x. The FSP shall obtain prior permission of the appropriate regulator for initiating voluntary liquidation proceedings.
- xi. The Adjudicating Authority shall provide the appropriate regulator an opportunity of being heard before passing an order for liquidation or dissolution of the FSP.

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Regards,

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