



भारत सरकार

GOVERNMENT OF INDIA

सीमा शुल्क प्रधान आयुक्त (पत्तन) कार्यालय

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (PORT)

सीमा शुल्क सदन, 15/1 स्ट्रैंड रोड, कोलकाता- 700001

CUSTOM HOUSE, 15/1 STRAND ROAD, KOLKATA- 700001

Standing Order: 04 / 2022

Sub: Standard Operating Procedure (SOP) for NCLT Cases in respect of the Insolvency and Bankruptcy Code (IBC) - reg.

Reference is invited to Instruction No. 1083/04/2022-CX9 dated 23.05.2022 issued by CBIC.

The Insolvency and Bankruptcy Code (IBC) 2016 was enacted to consolidate the fragmented laws pertaining to insolvency. The IBC handles the insolvency proceedings cases through tribunals i.e. NCLT and appellate tribunal NCLAT. The code recognizes three different types of creditors: Financial Creditors, Operational Creditors and other Creditors. Section 5(20) of the Code defines an Operational debt as "a claim in respect of the provisions of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority."

An Operational creditor has the right to file an application to initiate the insolvency resolution process of a corporate debtor and to file a claim in the insolvency resolution process and to participate, without voting rights, in a committee of creditors through their representatives.

The Insolvency and Bankruptcy Board of India has requested that role of GST and Customs authorities in certain key issues under the Insolvency and Bankruptcy Code, 2016 needs to be formulated. Further, GST and Customs Authorities have been classified as operational Creditors and are required to submit their claims against corporate debtors when the corporate insolvency and resolution process is initiated and public announcement inviting claims is made by the insolvency professional.

A timeline of 90 days from the insolvency commencement date is available for filing of claims. However, it has been observed that there is an inordinate delay in filing of claims by Customs and GST authorities. This leads to their claims not being admitted and extinguished once a resolution plan is approved. It is also observed that the authorities then litigate on the rejection of each claim, despite the settled position that no claims can be raised once the plan is approved and no demands can be raised on the resolution applicant who has taken over the company through such a resolution plan.

One of the reasons for such delay in filing of claims is that concerned Zonal office has not received information regarding initiation of the process in timely manner. Accordingly, it has been proposed that IBBI would share the details of the public announcement on a regular basis to an identified office / officer or a centralized system and hence it has been requested that such office / officer / system in CBIC needs to be identified and intimated to the IBBI for implementing the system for sharing of information.

Accordingly, following guidelines (SOP) have been issued by the Board to ensure a robust mechanism of communication from the nominated officer to the field formations and vice-versa and subsequent monitoring of action taken by the field formations on such communication by the Nodal Officer. The basic purpose of nominating a Nodal Officer is to ensure filing of the claims with the IBBI in a timely manner and within the period of 90 days from the insolvency commencement date.

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In the interest of protection of government revenue and to make the entire process smooth and effective, **CBIC has nominated the Additional Director General, DGPM as the Nodal Officer for the CBIC for the receipt of information regarding initiation of the insolvency resolution process and dissemination of the same to the field formations for necessary action at their end in terms of the provisions of the Insolvency and Bankruptcy Code, 2016.**

Accordingly, the SOP, as outlined below, may be followed in view of the appointment of Nodal Officer:

- i. The Additional Director General, DGPM (hereinafter referred as the Nodal Officer) will receive the information regarding initiation of the insolvency resolution process of a unit/company from the IBBI for which a dedicated email ID, to be accessed by the said Nodal Officer, will be created. The Nodal Officer may nominate JC / ADC (TAR), DGPM as alternate Nodal Officer for assisting him in his work.
- ii. The Nodal Officer will disseminate the information received by him, through official email, to all Zonal Pr. / Chief Commissioners with a copy to the concerned Pr. Commissioner / Commissioner within 02 (Two) working days.
- iii. For faster and timely dissemination of the information a dedicated Whatsapp group will also be created by the Nodal Officer which will have ADC/JC concerned (who may be nominated as nodal officer for the Zone) in the Pr./ Chief Commissioner's office, and the Pr. Commissioners / Commissioners concerned as its members. ADC / JC (STRC) of our Commissionerate will also join as member of Whatsapp group.
- iv. The concerned office / Commissionerate which has arrears pending against the unit/ company shall file its claims timely for safeguarding and realization of the government dues and inform the fact of having filed its claim to the Nodal Officer through the ADC/ JC in the Chief Commissioner's Office (CCO).
- v. The daily exercise to check for any new parties going in to insolvency from the website www.ibbi.gov.in will also be undertaken by all field formations for filing timely claims, as necessary.
- vi. Correspondences with the Resolution Professional (RP) should be made regarding finalization of the Resolution Plan. Timely verification should also be done from the website www.ibbi.gov.in to check if any orders were issued by NCLT with respect to resolution, liquidation, and/or withdrawal of application.
- vii. A monthly report of work done in terms of checking the public announcements, filing of claims, if any, liasoning with CIRP for providing updates on cases would be sent to the Nodal Officer by the ADC/JC in the CCO, in the attached Format.
- viii. The Nodal Officer will submit a consolidated monthly report to the Board for the purpose of review of progress/ action taken by the field formations.

Proforma for Monthly Report regarding IBBI claims

Name of the Zone -						
Opening Balance of the claims filed	No. of intimations received pertaining to arrears pending in the zone	No. of claims filed during the month	No. of claims filed in the prescribed time limit (Out of C)	No. of claims filed after the expiry of the prescribed time limit (Out of C)	No. of final orders issued for liquidation, resolution etc. along with brief details	Closing Balance (A)+(B)-(D)
(A)	(B)	(C)	(C1)	(C2)	(D)	(E)

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Any difficulty faced in implementation of the above may be brought to the notice of the undersigned.

RAJESH JINDAL, Pr Commr(RJ)-Cus-Port-KOL, O/o Pr Commissioner-Customs-Port-Kolkata
(Rajesh Jindal)
Principal Commissioner of Customs (Port)
Custom House, Kolkata

Date - 02-06-2022

To:

All Concerned:

- I) Chief Commissioner of Customs, Custom House, Kolkata
- II) Principal Commissioner of Customs (A&A), Custom House, Kolkata
- III) Principal Commissioner of Customs (Preventive), Custom House, Kolkata
- IV) All Joint / Additional Commissioners of Customs (Port)
- V) All Assistant / Deputy Commissioners of Customs (Port)
- VI) SCP (EDI), requesting to upload the document on Kolkata Customs website