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**THE LEGALITY OF SECOND REVISIONS IN RESOLUTION PLANS:
ANALYZING REGULATION 39 (1A)**- Abha Vaidya¹**Abstract**

This article investigates the legality of second revisions in resolution plans under Regulation 39(1A) of the Insolvency and Bankruptcy Board of India (IBBI) Regulations. By exploring the regulatory framework and analysing judicial interpretations, the article examines whether multiple revisions—comprising modifications and increased financial bids—are permissible. The article highlights the nuanced perspectives of courts on the matter through detailed scrutiny of relevant cases. The analysis reveals that the regulation, aimed at enhancing transparency and efficiency, is designed to maximise the asset value of corporate debtors while providing a structured decision-making process for the Committee of Creditors (CoC). This comprehensive examination underscores the importance of a flexible approach to the resolution process, aligned with global best practices and judicial precedents.

Keywords: Regulation, Corporate Debtors, Committee of Creditors, Bankruptcy, Insolvency, Resolution Plan

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Introduction

In the complex landscape of insolvency and bankruptcy proceedings, the resolution plan is a crucial document that outlines the strategy for resolving a debtor's financial distress. The resolution plan must meet various regulatory requirements to ensure fairness and feasibility. However, questions often arise regarding the permissibility of revising these plans, mainly when modifications to the plan and an increase in the financial bid are involved. One specific regulation that governs such revisions is Regulation 39 (1A) of the Insolvency and Bankruptcy Board of India (IBBI) Regulations.

This article delves into whether a second revision to a resolution plan, encompassing both modifications and an enhanced financial bid, is permissible under Regulation 39 (1A) (a). By examining the regulatory framework and Judicial Interpretations, efforts have been made to provide a comprehensive understanding of the nuances involved in such revisions and their potential impact on the resolution process.

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The Insolvency and Bankruptcy Board of India (IBBI), established on October 1, 2016, under the Insolvency and Bankruptcy Code, 2016², implements and regulates insolvency laws to maximise asset value, promote entrepreneurship, ensure credit availability, and balance stakeholder interests.

The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 govern India's corporate insolvency resolution process. These regulations came into force on December 1, 2016. They apply specifically to the resolution process for corporate entities facing insolvency.³

What is a CIRP Process?

² The Insolvency and Bankruptcy Code, 2016

³ The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

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A Corporate Insolvency Resolution Process (CIRP) refers to a process by which a Corporate Debtor who has committed a default allows a financial creditor,⁴ the operational creditor⁵ or the corporate debtor itself⁶ To initiate corporate insolvency resolution proceedings concerning such corporatedebtors. As per Section 6 of the Insolvency and Bankruptcy Code, 2016, a CIRP can be initiated by a Financial Creditor, an Operational Creditor, and a Corporate Debtor.⁷

- Role of Resolution Plans

The Insolvency and Bankruptcy Board of India, 2016 defines a resolution plan under Section 5(26) as a “resolution plan”, which means a plan proposed by a resolution applicant.⁸ for insolvency resolution of the corporate debtor as a going concern by Part II⁹ (Insolvency resolution and liquidation for corporate Persons). It refers to a plan proposed by any person for insolvency resolution of the corporate debtor. It acts like a comprehensive rehabilitation strategy for a Corporate Debtor facing insolvency. It is formulated based on the information memorandum provided by the resolution professional, and it encompasses legal, financial, management, and technical strategies aimed at expeditiously restoring the Corporate Debtor’s viability.

- Issue of multiple revisions

Regulation 39(1)(a), which shall be further discussed in depth in the article, allows for modification and a challenge mechanism to enable resolution applicants to improve their plans. The question that is raised at this juncture is about interpretation whether this statutory permission allows for only a single revision or multiple revisions, mainly when it involves both modifications to the plan and an increase in the financial bid, to maximise the value of the Corporate Debtor.

⁴ The Insolvency and Bankruptcy Code, 2016, S.7

⁵ The Insolvency and Bankruptcy Code, 2016, S.9

⁶ The Insolvency and Bankruptcy Code, 2016, S.10

⁷ The Insolvency and Bankruptcy Code, 2016, S.6

⁸ The Insolvency and Bankruptcy Code, 2016, S.5(25)

⁹ The Insolvency and Bankruptcy Code, 2016, S. 5(26)

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- **Regulation 39 (1)(A):**

This section outlines the procedure for submitting resolution plans by prospective resolution applicants (RAs) on the final list, ensuring they adhere to the Insolvency and Bankruptcy Code (IBC) and associated regulations. This sub-clause provides additional provisions that the resolution professional may include in the request for resolution plans.

1. Modification of the Resolution Plan:

- The resolution professional can allow modification of the resolution plan received under sub-regulation (1), but only once.

2. Challenge Mechanism:

- The resolution professional can use a challenge mechanism to enable resolution applicants to improve their plans. This mechanism can create a competitive process to get better terms or proposals from the applicants.¹⁰

The rationale behind the regulation: Regulation 39(1)(a) was added via notification IBBI/2021-22/GN/REG078 by the Insolvency and Bankruptcy Board of India (IBBI) through the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It aimed to enhance the efficiency and transparency of the Corporate Insolvency Resolution Process (CIRP). The Rationale applied by the lawmakers behind inserting Regulation 39(1)(a), as it appears, was to streamline the resolution process for corporate debtors, to ensure that the Committee of Creditors (CoC) has a clear and structured process to evaluate and vote on resolution plans. The regulation aims to strengthen the decision-making process by the CoC and ensure that all resolution plans submitted are evaluated based on predefined criteria, which helps in making informed and transparent decisions.

Ensuring a transparent and efficient resolution process boosts the confidence of stakeholders, including creditors and investors. It enhances the overall credibility of the insolvency framework in India. The amendment also aligns with global best practices in insolvency resolution, aiming to improve India's ranking in ease of doing business and insolvency resolution frameworks.

¹⁰ The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 S.39(1A)

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Judicial Interpretations

1. Ashdan Properties Private Limited V. Mamata Binani (2024)

Parties Involved:

- **Applicant:** Ashdan Properties Private Limited
- **Respondent:** Dr. Mamta Binani (Resolution Professional for Corporate Insolvency Resolution Process (CIRP) of Rolta India Limited).
- **Court:** National Company Law Tribunal (NCLT), New Delhi Bench
- **Date of Judgement:** March 18, 2024

In this case, Ashdan Properties Private Limited, the Applicant, filed an application in the Corporate Insolvency Resolution Process (CIRP) of Rolta India Limited seeking various reliefs, including directing the CoC to withdraw the opportunity for enhanced financial offers provided to all Resolution Applicants, after negotiations with the applicant. The Applicant was the H1 Bidder. Despite the Applicant's compliance and submission of an enhanced financial offer, the CoC invited further Bids from all Resolution Applicants, leading to the Applicant applying to this case.

The court dealt with the issue of whether the CoC's invitation for enhanced financial offers post-negotiation with the Applicant was within the scope of the Insolvency and Bankruptcy Code.

The court dismissed the application, holding that the CoC was within its rights to call for revised offers from all Resolution Applicants to maximise the value of the Corporate Debtor. They concluded that the CoC's efforts to enhance the bid amount were justified, leading to the dismissal and disposal of an application filed by the applicant, Ashdan Properties Pvt. Ltd.¹¹

¹¹Ashdan Properties Pvt. Ltd. v. Mamta Binani ((RP of Rolta India Ltd.) &Ors. (Company Appeal (AT) (Insolvency) No.464 of 2024

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Vizag Minerals and Logistics Private Ltd. v. Ravi Shankar Devarakonda and Ors. (2023)

Parties Involved:

- **Appellant:** Vizag Minerals and Logistics Pvt. Ltd.
- **Respondents:** Ravi Shankar Devarakonda and Ors.
- **Court:** Supreme Court of India
- **Date of Judgement:** August 25, 2023

The Hon'ble Supreme Court agreed with the National Company Law Appellate Tribunal at Chennai and held that the word 'or' in Regulation 39(1) (A) should be read as 'in addition to' and not 'to the exclusion of'. This means that the resolution professional may, if envisaged in the request of the resolution plan, allow, under 39(1) (A), modification of the resolution plan received, albeit only once. However, this will not affect and bar recourse to the challenge mechanism when adopted by the Committee of Creditors to enable resolution applicants to improve or better their plans.¹²

2. Kedarnath Mining Pvt Ltd v. Mamta Binani Resolution Professional (2023)

Parties Involved:

- **Applicant:** M/s. Kedarnath Mining Pvt. Ltd.
- **Respondent:** Mamta Binani, Resolution Professional of Tamra Dhatu Udyog Private Limited.
- **Court:** National Company Law Tribunal, Kolkata Bench
- **Date of Order:** January 1, 2024

The Legal Issue that was discussed in this case was whether the Committee of Creditors has the authority to allow all resolution applicants to revise their plans for Asset Value Maximisation and whether such revisions would violate Regulation 39(1)(A) of the Insolvency and Bankruptcy Board of India's (CIRP) Regulations, 2016.

The court had held that the Committee of Creditors is permitted to reconsider its decision to allow all resolution applicants to enhance their plans for value maximisation. It allowed the Committee of Creditors' application to reconsider resolution plans by all

¹² Vizag Minerals and Logistics Private Ltd. v. Ravi Shankar Devarakonda and Ors. C.A. No. 005430 / 2023
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applicants to maximise asset value, emphasising the importance of feasibility and viability of the plans.¹³

3. **VistraITCL (India) Ltd. Vs. Torrents Investment Pvt. Ltd. &Ors. (2023)**

Parties Involved:

- **Appellant:** Vistara ITCL (India) Ltd.
- **Respondent:** Torrents Investment Pvt. Ltd. &Ors.
- **Court:** National Company Law Appellate Tribunal, New Delhi Bench
- **Date of Order:** January 25, 2023

This case resulted from two appeals filed by Reliance Capital Limited and IndusInd International Holding Ltd. against the 2nd February 2023 order by the Adjudicating Authority.

The Supreme Court held that even after the Challenge Mechanism is completed under Regulation 39(1)(A)(b), the CoC retains its authority to negotiate with any of the Resolution Applicants or to terminate the Resolution Process and proceed to re-issue a Request for Resolution Proposals (RFRP). Regulation 39(1)(A) cannot be interpreted as restricting the CoC's authority to engage in discussions and deliberations and undertake further negotiations with the Resolution Applicants following the completion of the Challenge Mechanism.¹⁴

4. **Consortium of Prudent ARC Ltd. Vs. Ravi Shankar Devarakonda and Ors. (2023)**

Parties Involved:

- **Appellant:** Consortium of Prudent ARC Ltd.
- **Respondent:** Ravi Shankar Devarakonda and Ors.
- **Court:** National Company Law Appellate Tribunal, Chennai Bench
- **Date of Judgement:** June 26, 2023

¹³ Kedarnath Mining Pvt Ltd v. Mamta Binani Resolution Professional I.A. (IB) No. 1444(KB) 2023

¹⁴ VistraITCL (India) Ltd. Vs. Torrents Investment Pvt. Ltd. &Ors. Company Appeal (AT) (Ins.) No. 87-88 of 2023

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In this case, the appellant (Consortium of Prudent ARC Ltd.) sought to prevent the respondents from considering any resolution plans submitted after October 20, 2022. The main issue was whether the Committee of Creditors (CoC) could conduct a Swiss Challenge process and consider unsolicited plans after the deadline. The appellant argued against this, citing concerns about fairness and transparency, as it could disadvantage other participants. Despite the appellant's objections, the CoC adopted a Swiss Challenge method, which the appellant claimed was against prior agreements and not adequately communicated.

The tribunal upheld the CoC's authority to conduct the Swiss Challenge process. Clauses 1.17, 1.18, and 7.2 of the Request for Resolution Plan (RFRP) allowed the CoC to negotiate and adopt any process for value maximisation. The tribunal noted that the decision was supported by a substantial majority (99.18%) during their 43rd meeting. It found that the Challenge Process, initiated on January 4, 2023, and the voting window that closed on January 16, 2023, complied with guidelines. The appellant's non-participation led to their last resolution plan being considered, which the CoC did not approve. The tribunal also noted that considering unsolicited offers, like Vedanta's revised offer, was within the CoC's rights for value maximisation and did not violate any legal provisions. The CoC's decision was upheld. The tribunal interpreted Regulation 39(1A) of the Corporate Insolvency Resolution Process (CIRP) Regulations, emphasising that it did not limit the CoC's powers to take measures in the interest of value maximisation. The tribunal rejected the appellant's claim that the regulation was mandatory and prohibited considering any plans post-deadline.¹⁵

5. Jindal Stainless Ltd. v. Mr. Shailendra Ajmera, Resolution Professional of Mittal Corp. Ltd. &Ors.

Parties Involved:

- **Appellant:** Jindal Stainless Ltd.

¹⁵ Consortium of Prudent ARC Ltd. Vs. Ravi Shankar Devarakonda and Ors. Company Appeal (AT) (CH) (Ins) No. 37/2023

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- **Respondents:** Mr. Shailendra Ajmera, Resolution Professional of Mittal Corp. Ltd. &Ors.
- **Court:** National Company Law Appellate Tribunal, New Delhi Bench
- **Date of Judgement:** January 18, 2023

In this case, the National Company Law Tribunal (NCLT), Mumbai Bench, initiated the CIRP against Mittal Corp Limited on November 10, 2021. The Resolution Professional issued the RFRP on April 11, 2022, with a final submission date of May 31, 2022. Six plans were received from Jindal Stainless Limited and Shyam Sel and Power Limited. The CoC implemented a Challenge Process for plan improvement in its 12th meeting on July 4, 2022. Despite participating, Jindal Stainless Ltd.'s plan was not approved. The CoC began voting on July 15, 2022. Jindal Stainless Ltd. appealed on August 11, 2022. The Appellate Tribunal upheld the CoC's decisions and confirmed its power to modify or cancel negotiations, including the Challenge Process, in a judgment delivered on January 18, 2023.

The regulation allows two mechanisms to improve resolution plans: modifying the received plan (but not more than once) or using a challenge mechanism. The court affirmed that the Committee of Creditors (CoC) has the power to negotiate with resolution applicants after receiving the plans and before voting on them. The CoC can also annul the resolution plan process and call for the submission of new resolution plans or modifications of existing ones as per the clauses in the Request for Resolution Plan (RFRP).

The CoC's decisions are based on their commercial wisdom, and they can cancel or modify any negotiation with the resolution applicant, including the challenge process.¹⁶

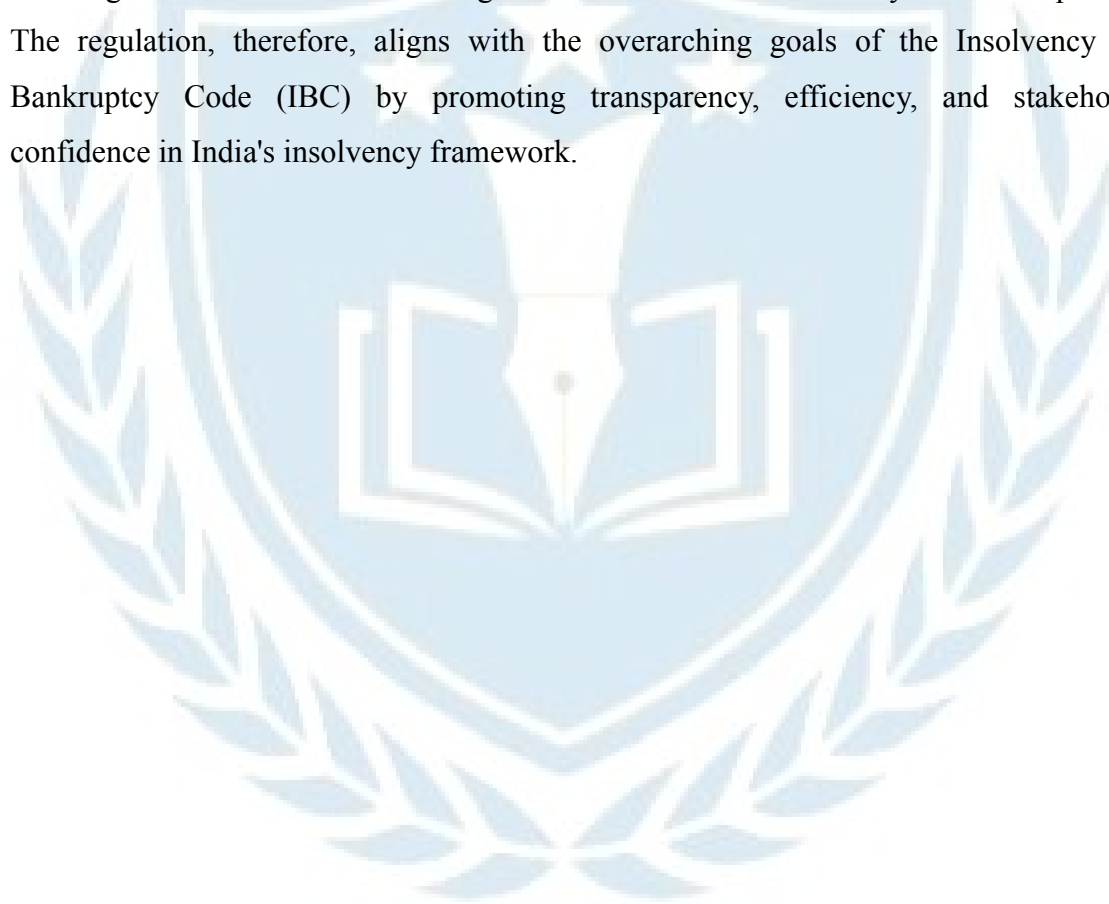
Conclusion

¹⁶ Jindal Stainless Ltd. v. Mr. Shailendra Ajmera, Resolution Professional of Mittal Corp. Ltd. &Ors., Comp. App. (AT) (Ins.) No. 1058 of 2022

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The interpretation of Regulation 39(1A) of the Insolvency and Bankruptcy Board of India (IBBI) Regulations should extend beyond a literal reading. The primary objective of this regulation, as reflected in various judicial interpretations, is to facilitate the maximisation of asset value and ensure the viability of resolution plans. Judicial decisions have consistently emphasised that the Committee of Creditors (CoC) can allow multiple revisions and employ mechanisms like the challenge process to enhance bids and improve resolution outcomes. This flexible framework is essential for adapting to evolving circumstances and ensuring a fair and effective insolvency resolution process. The regulation, therefore, aligns with the overarching goals of the Insolvency and Bankruptcy Code (IBC) by promoting transparency, efficiency, and stakeholder confidence in India's insolvency framework.



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