
Guide

For

Suppliers

to Recover Money under the

Insolvency and Bankruptcy Code, 2016

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Anil Chawla Law Associates LLP
Business Lawyers, Strategic Advisors and Insolvency Professionals

www.indialegalhelp.com

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All questions given in the FAQ part of the Guide are hypothetical and have no relation to any real case or situation. The questions have been framed to illustrate legal principles and are not intended to malign or tarnish any person or company.

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Notes:

Anil Chawla Law Associates LLP (ACLA) is registered in India with limited liability and bears LLPIN AAA-8450. ACLA has two Designated Partners / Partners – Anil Chawla, Advocate and Insolvency Professional; Yogita Pant, Advocate and Insolvency Professional. Both Partners have contributed equally in the preparation of this Guide. There are no other contributors.

This Guide is an academic exercise. It does not offer any advice or suggestion to any individual or firm or company.

Preface

Indian judicial system is notorious for the long time that court cases take. A suit for recovery of money can often take one or more decades. This makes it extremely difficult for small suppliers to recover money from customers.

The Insolvency and Bankruptcy Code, 2016 (IB Code) provides an alternative course to suppliers to press their corporate customers (companies and LLP's) **for payments above Rs. 1 Crore**. Under the IB Code, a customer is obliged to pay within ten days of receipt of a notice demanding payment. If he fails to pay, the supplier has the option to approach National Company Law Tribunal (NCLT) to initiate insolvency proceedings against the customer.

Once the Tribunal admits application for insolvency, the management of the debtor company will rest with an Insolvency Professional and the Board of Directors / Partners of the company / LLP will have no powers. This is an extremely unpleasant situation for any company / LLP. Hence, most customers (unless they are sinking beyond any hope of survival) will seek to avoid insolvency either by paying on receipt of a notice or by trying for a settlement or at the least by raking up an old dispute related to the supply.

IB Code is indeed a very powerful tool for recovery of undisputed sums of money. But, like any tool, it has its limitations and needs to be used with care and caution.

This Guide is intended to help suppliers to use IB Code to recover money from companies and LLP's without the need of a lawyer at the initial stage. It explains the key steps that are needed to be taken. It also provides the forms needed by a supplier to initiate proceedings under the IB Code. After reading this Guide, you, a supplier, should be in a position to take the first step of issuing a Demand Notice to your customer on your own.

We, Anil Chawla Law Associates LLP, take pride in being a business-friendly law firm whose partners are insolvency professionals (in addition to being advocates). We specialize in adding value to businesses. This Guide is a step in our ongoing passion and commitment to help Indian businesses grow, prosper and create sustainable value.

We hope that this Guide is useful for you.

Anil Chawla
Advocate & Insolvency Professional,
Senior Partner, Anil Chawla Law Associates LLP

24 March 2020

Abbreviations

CA	Chartered Accountant
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
CoC	Committee of Creditors
CS	Company Secretary
FC	Financial Creditor
IBBI	Insolvency and Bankruptcy Board of India
IB Code / IBC / The Code	The Insolvency and Bankruptcy Code, 2016 (No. 31 of 2016)
IP	Insolvency Professional
IRP	Interim Resolution Professional
LLP	Limited Liability Partnership Firm
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
OC	Operational Creditor
RP	Resolution Professional

Part A

Frequently Asked Questions

Q.1 Who can benefit from this Guide?

This Guide is intended for suppliers who are looking to recover money using the Insolvency and Bankruptcy Code, 2016 (IB Code). Suppliers are referred to as operational creditors in the IB Code. Suppliers can be of goods or services or both. Even employees can take advantage of the IB Code, either individually or jointly.

Q.2 Describe the Insolvency process in brief?

Insolvency is an opportunity provided to a sinking company to arrive at a settlement with its creditors and restart operations with a viable level of debt. An Insolvency Professional assists the Committee of Creditors (consisting of banks and other financial lenders; but not operational creditors) to approve a resolution plan which will enable the debtor company to become healthy again. Resolution process almost always involves the lenders and suppliers taking big cuts on the amounts that the debtor company owes to them. Resolution process also often involves a change in the management of the company with a new investor infusing fresh funds in the company and reviving it. As soon as NCLT admits an application for initiating insolvency proceedings against a debtor company, Board of Directors of the debtor company loses all powers and an Insolvency Professional becomes de-facto management of the company.

In case the resolution plan is not approved, NCLT order for the company to be liquidated. As part of liquidation, the company is either sold as an ongoing business or sold as separate parts. After liquidation, the company ceases to exist and is dissolved. Money received from liquidation, will first go towards costs of insolvency and liquidation processes. The balance will go towards first paying the secured creditors and workmen. Often, there will be nothing left after paying secured creditors and workers. So generally speaking, in most cases of liquidation suppliers get absolutely nothing.

Q.3 What is the minimum amount for which the IB Code can be used?

The IB Code can be used to recover outstanding amount above **Rs.1,00,00,000 (Rupees One Crore)** from a corporate (company or LLP).

Q.4 What are the advantages and disadvantages of using the IB Code to recover money as against filing suit in a civil court?

Advantages of IB Code Route	Disadvantages of IB Code Route
Quick response can be expected from the customer in 10 days	If customer raises a pre-existing dispute, the route is not available. NCLT will not adjudicate on the dispute and will reject the application for insolvency.
No court fee for issue of demand notice under IB Code.	In case NCLT orders insolvency, the decision making moves to Committee of Creditors which includes only financial creditors and does not include the supplier(s).
A demand notice under IB Code can be issued without using services of a lawyer.	In case of Insolvency Resolution, the supplier often gets very low (say 5-10% of his dues) amount.
The filing fee for application before NCLT for initiating insolvency proceedings is only Rs. 2000-. Court fees for civil suit vary from state to state and can be as high as 10% of claim amount.	A supplier is very low on the priority in case of liquidation. This may lead to him getting nothing at all if after liquidation the money realized is not sufficient to pay secured creditors and workers.
The only expenditures that a supplier needs to incur are (a) fees of Rs. 2000- (b) lawyer fees for application filing and (c) cost of advertisement (d) IRP fees (approx. Rs. 1-2 Lakhs). All other costs are borne by the debtor company. Civil suit on the other hand requires ongoing expenditure for the entire duration of the suit.	
Clear well-specified time lines for all legal processes. Resolution expected to be done in 180 / 270 / 330 days. Liquidation within 1 year + 90 days.	
In case of resolution of insolvency, the supplier gets more than liquidation value after approval of Resolution Plan.	
Leads to money in hand as against a civil suit which may need to be followed up by a further suit for execution of decree.	
Limited recourse to appeals. Most civil suits in India move all the way up to High Court and Supreme Court leading to more delays.	

Q.5 If the customer has raised some objections to quality or quantity of supplies and refused to pay, can the supplier take advantage of IB Code?

No, in case of any pre-existing dispute about quantity or quality, the supplier cannot take advantage of the IB Code. The dispute should be pre-existing before the date of the notice by supplier. However, it is not necessary that the dispute be pending before a court or arbitration tribunal. For example, if there has been exchange of emails between the supplier and the buyer about quality of supplies, this will qualify as pre-existing dispute and the case will need to be decided by a civil court and not under the IB Code.

Q.6 What is the first step to be taken by a supplier to initiate process under the IB Code?

A notice either under Form 3 or under Form 4 (preferable to send both Form 3 and Form 4) needs to be sent to the buyer. Formats for Form 3 and Form 4 are given in Part B of this Guide. Form 3 is demand for money owed. Form 4 is used when the supplier sends one invoice to the buyer and demands payment for the same.

A supplier does not need a lawyer or insolvency professional to send either Form 3 or Form 4. It is advised that the Form 3 / Form 4 is signed by the supplier himself / herself with his / her official rubber stamp duly affixed.

Q.7 Is there any time limit within which the Notice to demand payments can be issued under the IB Code?

A notice demanding payment cannot be issued till the payment falls due as per the terms of the contract. For example, if a supplier agreed to a payment term of two years, he cannot issue a notice under the IB Code before the end of two years from the date of supplies to demand payment.

Limitation Act is applicable to all action under the IB Code. Hence, the action under the IB Code ought to be initiated before a period of **three (3) years** has lapsed from the date of supply of goods or services. If the notice is issued a week before the end of the limitation period, it will not be possible to file application before NCLT since a time of ten days has to be given after the notice for the buyer to either pay or to reply. Hence, it is advised that the notice in Form 3 / Form 4 is issued more than ten days before the end of three-year period from the date of supplies.

Q.8 Is there any format for a supplier to issue a notice demanding payment under the IB Code?

Please refer to Q6 above and also refer to Part B of this Guide.

Q.9 What are the documents to be enclosed with Form 3?

Strictly speaking there is no need to attach or enclose any documents with Form 3. However, it is strongly advised that all documents that can be used to prove the existence of the debt and also to determine the amount of the debt should be enclosed with Form 3. For example, if there is any communication, wherein the buyer has accepted the debt, a copy of the communication should be enclosed. If there is a ledger account which gives a record of the transactions during the past one or two or three years, a copy of the ledger account should be attached. If there are any invoices copies of the same should also be enclosed. Please do not enclose any originals.

Q.10 What are the documents to be enclosed with Form 4?

Copy of the invoice against which payment is being demanded should be enclosed / attached with the duly filled Form 4.

Q.11 When is it advisable to send Form 3 and when one should choose Form 4?

To avoid confusion and as a matter of abundant caution, it is advised that both the forms – Form 3 and 4 – should be sent in all cases.

Q.12 Can a person himself issue a Notice, or is a lawyer / Insolvency Professional required?

A lawyer is not required for issuing the notice under IB Code. A supplier can himself / herself issue the Notice. If at all you wish to get professional help for preparing the notice, please make sure that the lawyer / CA / CS concerned has expertise related to IB Code. Since it is a new law many legal professionals have almost no knowledge of the IB Code.

An Insolvency Professional (IP) may be the best person to assist with preparing the notice and also to take the matter forward. However, there is no legal requirement to engage an IP at this stage.

Q.13 Can the notice in Form 3 / Form 4 be sent on the company letterhead or in a slightly different format with essentially the same data as given in the prescribed form?

No, it is absolutely essential to follow the prescribed format without any changes. The notice under Form 3 / Form 4 should not be issued on company letterhead.

Q.14 What is the mode of sending the Notice?

The Notice can be sent by any of the following ways:

- a) a hard copy sent with acknowledgment due to the registered office by hand or registered post or speed post; OR
- b) by email to either a whole time director or a designated partner or a key managerial personnel, if any.

Notably, the delivery can be either by hard copy or by email. Even if it reaches one whole-time director of a company by email and other directors are not informed, service of notice is appropriate.

Q.15 Is it sufficient to send the Notice through email?

Yes, but only to a whole time director or designated partner or key managerial personnel of the debtor. Notice being sent to the debtor company's registered office must be sent in hard copy only.

Q.16 Does a copy of the Notice need to be sent to NCLT or bank or any government authority?

No! Copy of the Notice need not be sent to NCLT or bank.

A copy of the Notice should be filed with National E-Governance Services Limited (www.nesl.co.in). Filing is online and a small fee (generally less than Rs. 500) has to be paid for the filing.

Q.17 When can one initiate proceedings before NCLT after sending the Demand Notice? How long does one need to wait for a reply after sending the Notice?

One can move an application to NCLT in Form 5 (given in Part B of this Guide) for initiating corporate insolvency resolution process against the recipient of the Demand Notice after **ten (10) days have passed from the expected date of delivery of the Notice.**

Q.18 What is the next step after issuing a Notice of Demand?

Next step after issue of Notice of Demand is to file an application before the concerned bench of National Company Law Tribunal (NCLT). Application has to be in Form 5 (given in Part B of this Guide).

However, we strongly advise our clients to make efforts to initiate negotiations with the debtor company to arrive at a settlement. Notice of Demand should be used only as a tool to press for negotiations. The law (IB Code) is biased against the suppliers (operational creditors). So, often any settlement is better than moving an application before NCLT against the debtor.

Q.19 How do I choose the bench of NCLT where I have to file application against the debtor company?

Choice of NCLT bench is based on the location of registered office of the debtor company. Please choose NCLT bench according to the following table:

S.NO.	NCLT Bench	Territorial Jurisdiction of the Bench - Location of registered office of the debtor company
1	New Delhi	Union territory of Delhi.
2	Ahmedabad	State of Gujarat.
		Union territory of Dadra and Nagar Haveli. Union territory of Daman and Diu.
3	Allahabad	State of Uttar Pradesh.
		State of Uttarakhand.

S.NO.	NCLT Bench	Territorial Jurisdiction of the Bench - Location of registered office of the debtor company
4	Amaravati	State of Andhra Pradesh.
5	Bengaluru	State of Karnataka.
6	Chandigarh	State of Himachal Pradesh. State of Jammu and Kashmir. State of Punjab. Union territory of Chandigarh. State of Haryana.
7	Chennai	State of Tamil Nadu. Union territory of Puducherry.
8	Cuttack	State of Chhattisgarh. State of Odisha.
9	Guwahati	State of Arunachal Pradesh. State of Assam. State of Manipur. State of Mizoram. State of Meghalaya. State of Nagaland. State of Sikkim. State of Tripura.
10	Hyderabad	State of Telangana.
11	Indore Bench at Ahmedabad	State of Madhya Pradesh.
12	Jaipur	State of Rajasthan.
13	Kochi	State of Kerala. Union territory of Lakshadweep.
14	Kolkata	State of Bihar. State of Jharkhand. State of West Bengal. Union territory of Andaman and Nicobar Islands.
15	Mumbai	State of Goa. State of Maharashtra.

Q.20 What is the amount that one should budget for (a) in case the debtor company pays after receiving notice and (b) in case it becomes necessary to move application before NCLT?

If you are able to issue the notice in Form 3 / Form 4 yourself without any help from legal professional, there is practically no cost. Typically, a legal professional with knowledge of procedures under IB Code will charge upwards of Rs. 25,000- for issuing a notice.

In case the debtor company does not pay on receipt of the notice and it becomes necessary to file application for initiating insolvency proceedings against the debtor, the estimated costs (including cost of Notice issued earlier) are likely to be as follows:

Head of Expenditure	Estimated Expenditure Rs.
Notice Form 3 / Form 4	25,000
Application Fee	2,000
Lawyer's Fees for drafting and filing application before NCLT	50,000
Fees for Insolvency Professional acting as Interim Resolution Professional	250,000
Advertisement in two leading newspapers	30,000
TOTAL	357,000

The above are approximate estimates. Actual expenditure may vary greatly based on the choice of professionals and the NCLT bench.

Notably, fees for Resolution Professional (not Interim Resolution Professional), valuers and other such expenditure are paid by the debtor company or by the committee of creditors. However, **the expenses shown in the table above are generally to be borne wholly by the operational creditor** filing application before NCLT. Hence, it is important to take the decision of approaching NCLT after due consideration and after providing for the required budget.

The cost of advertisement is to be reimbursed by the committee of creditors to the extent it finds the amount reasonable. Often, the Committee of

Creditors is not inclined to reimburse any expenses to the Operational Creditor who has initiated the process.

For reducing the cost of advertisement, it is suggested that the newspaper advertisement should only give a link to a webpage where the full Public Announcement is displayed. In case the full text of Public Announcement is printed, the costs can be astronomical.

Q.21 Will one get back the costs incurred for initiating insolvency proceedings against a debtor company?

No, except for the costs related to advertisements in two newspapers, the costs incurred by a supplier for initiating insolvency proceedings are entirely on his / her own head. Even in case of advertisement costs, there is no compulsion on the CoC to pay. Experience indicates that the CoC is not inclined to pay anything to the OC who initiated the proceedings.

Q.22 Can a supplier suggest name of an IP who will act as Resolution Professional?

Yes! A supplier applying to NCLT for initiating corporate insolvency process can suggest the name of an Insolvency Professional who will act as Interim Resolution Professional (IRP). IRP's role is committed to collecting all claims and forming the Committee of Creditors. An IRP may or may not be asked to continue as Resolution Professional. Committee of Creditors (which consists only of banks and other such lenders) decides whether the IRP should continue or not.

Though it is not necessary to suggest the name of an Insolvency Professional who will act as IRP, we advise our clients to always exercise the right to suggest an IP who will act as IRP.

The advantages of suggesting an IP are (a) the supplier can get updates about the process and (b) it is possible to negotiate lower fees with the IP nominated as IRP. If NCLT chooses an IRP from the list sent by IBBI the supplier has no control on either the fees or the costs. It is necessary to get the consent of the IP who is proposed to be nominated as IRP. It is customary for the IP to ask for half of his fees at the time of giving the consent.

Q.23 What in your opinion are the chances of being able to recover money using the Insolvency and Bankruptcy Code?

If your customer is in decent financial health, there is a good chance that on receipt of the notice in Form 3 / Form 4, he will pay up.

On the other hand, if he / she is already sinking and has lost all hopes of coming out of troubles, it is likely that he / she will be praying in his / her heart for insolvency. In such a case you have practically very low chances of recovering much money by approaching the NCLT. In such cases, we often advise our clients to compromise with the customer and accept whatever the customer is in a position to pay. As they say, a bird in hand is better than ten in the bush.

Q.24 NCLT has already admitted application by supplier and has ordered initiation of Corporate Insolvency Resolution Process (CIRP) against the debtor company. Now, the debtor company wants to pay and settle the matter with the supplier on the condition that the supplier files an application in NCLT for stopping the CIRP. Can it be done?

It is not as simple as that. In addition to settling with the supplier, the debtor company will have to convince the Committee of Creditors. If 90% of voting power of Committee of Creditors approves, the supplier can file an application with NCLT for withdrawing his original application and for stopping the CIRP process. In essence, the arrow of insolvency once shot by the supplier cannot be withdrawn by him without approval of CoC.

Q.25 I have heard rumors that a company, to whom we supply regularly, has gone insolvent. How do I find out the truth?

Please visit the website of the relevant NCLT depending on the location of the registered office of the company. All orders issued by the NCLT are available on the website. If there is any order against the company, it will be available on the website of the relevant NCLT.

You may also visit

<http://www.mca.gov.in/mcafoportal/viewCompanyMasterData.do> and look at the Master Data of the company. If the company is under insolvency resolution process, Status under CIRP Process will indicate accordingly.

In case corporate insolvency resolution process has been initiated against the company, you need to contact the concerned IRP or RP and file your

claim with him / her. Name of the IRP / RP will be given in the relevant order(s) of NCLT. Contact details of the IRP / RP can be obtained from the website of IBBI.

Q.26 I recently came to know that one of our customers has gone insolvent. A search on NCLT website confirmed it. I have also seen the Public Announcement by Interim Resolution Professional asking creditors to submit their claims before the date specified in it. More than two weeks have passed since the last date specified in the Public Announcement. Can I still submit my claim?

Yes, you can still submit your claim. Under relevant regulations, claims can be submitted on or before the **ninetieth (90th) day** of the start of the commencement of the corporate insolvency resolution process (CIRP) or the date of order by NCLT.

In case more than thirty days have passed since the start of CIRP, you will need to find out the name and contact details of the Resolution Professional (who may not be same as Interim Resolution Professional). Name will be mentioned in the relevant order of NCLT. Address and contact details is available in the list of Insolvency Professionals published on the website of Insolvency and Bankruptcy Board of India (www.ibbi.gov.in)

Q.27 If the corporate insolvency resolution process has already been initiated and an Interim Resolution Professional (IRP) appointed, how can I file my claim with the IRP?

Claims by suppliers / operational creditors have to be filed in Form B (given in Part B of this Guide). The Form can be sent in person or by post or by email.

Q.28 I submitted a claim with Interim Resolution Professional (IRP) within the due time. I do not know whether my claim has been accepted or rejected. What can I do to find out whether my claim is accepted or rejected? How can I find out? In case my claim has been rejected by the IRP, what can I do?

The only person who can tell you whether your claim has been accepted or rejected is the IRP. You should approach the IRP to confirm the status of your claim. An IRP / RP is supposed to decide within seven days of

receiving the claim whether the claim is accepted or rejected by him / her. List of Creditors is supposed to be available for inspection with the IRP / RP.

In case the IRP / RP has rejected your claim or refuses to tell you whether your claim has been accepted or refused, you can approach the concerned bench of NCLT for relief.

Part B

Forms

FORM 3

(See clause (a) of sub-rule (1) of rule 5)
FORM OF DEMAND NOTICE / INVOICE DEMANDING PAYMENT UNDER THE INSOLVENCY AND BANKRUPTCY
CODE, 2016
(Under rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

[Date]

To,

[Name and address of the registered office of the corporate debtor]

From,

[Name and address of the registered office of the operational creditor]

Subject: Demand notice/invoice demanding payment in respect of unpaid operational debt due from [corporate debtor] under the Code.

Madam / Sir,

1. This letter is a demand notice / invoice demanding payment of an unpaid operational debt due from [**Name of corporate debtor**].
2. Please find particulars of the unpaid operational debt below:

PARTICULARS OF OPERATIONAL DEBT		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKING FOR COMPUTATION OF DEFAULT IN TABULAR FORM)	
3.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A	

	COMPANY)	
4.	DETAILS OF RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS	
5.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY (IF ANY)	
6.	PROVISION OF LAW, CONTRACT OR OTHER DOCUMENT UNDER WHICH DEBT HAS BECOME DUE	
7.	LIST OF DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF OPERATIONAL DEBT AND THE AMOUNT IN DEFAULT	

3. If you dispute the existence or amount of unpaid operational debt (in default) please provide the undersigned, within ten days of the receipt of this letter, of the pendency of the suit or arbitration proceedings in relation to such dispute filed **before** the receipt of this letter / notice.
4. If you believe that the debt has been repaid before the receipt of this letter, please demonstrate such repayment by sending to us, within ten days of receipt of this letter, the following:
 - (a) an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
 - (b) an attested copy of any record that [name of operational creditor] has received the payment.
5. The undersigned, hereby, attaches a certificate from an information utility confirming that no record of a dispute raised in relation to the relevant operational debt has been filed by any person at any information utility. (if applicable)
6. The undersigned request you to unconditionally repay the unpaid operational debt (in default) in full within ten days from the receipt of this letter failing which we shall initiate a corporate insolvency resolution process in respect of [name of corporate debtor].

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor
Name in block letters:
Position with or in relation to the operational creditor:

Address of person signing:

Instructions

1. Please serve a copy of this form on the corporate debtor, ten days in advance of filing an application under section 9 of the Code.
2. Please append a copy of such served notice to the application made by the operational creditor to the Adjudicating Authority.

Form 4

(See clause (b) of sub-rule (1) of rule 5)

FORM OF NOTICE WITH WHICH INVOICE DEMANDING PAYMENT IS TO BE ATTACHED.
(Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

[Date]

To,

[Name and address of registered office of the corporate debtor]

From,

[Name and address of the operational creditor]

Subject: Notice attached to invoice demanding payment

Madam / Sir,

[Name of operational creditor], hereby provides notice for repayment of the unpaid amount of INR [insert amount] that is in default as reflected in the invoice attached to this notice.

In the event you do not repay the debt due to us within ten days of receipt of this notice, we may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process under section 9 of the Code.

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor
Name in block letters:
Position with or in relation to the operational creditor:
Address of person signing:

Form 5

(See sub-rule (1) of rule 6)

APPLICATION BY OPERATIONAL CREDITOR (S) TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS
*UNDER CHAPTER II OF PART II / UNDER CHAPTER IV OF PART II OF THE CODE
[*strike out whichever is not applicable]

(Under rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

[Date]

To,
The National Company Law Tribunal
[Address]

From,
[Name and address for correspondence of the operational creditor]

In the matter of [name of the corporate debtor]

Subject : **Application to initiate corporate insolvency resolution process in respect of [name of the corporate debtor] under the Insolvency and Bankruptcy Code, 2016.**

Madam/Sir,

[Name of operational creditor], hereby submits this application to initiate a corporate insolvency resolution process in the case of [name of the corporate debtor]. The details for the purpose of this application are set out below:

Part - I

PARTICULARS OF APPLICANT		
1.	NAME OF OPERATIONAL CREDITOR	
2.	IDENTIFICATION NUMBER OF OPERATIONAL CREDITOR (IF ANY)	
3.	ADDRESS FOR CORRESPONDENCE OF THE OPERATIONAL CREDITOR	

Part - II

PARTICULARS OF CORPORATE DEBTOR		
1.	NAME OF THE CORPORATE DEBTOR	
2.	IDENTIFICATION NUMBER OF CORPORATE DEBTOR	
3.	DATE OF INCORPORATION OF CORPORATE DEBTOR	
4.	NOMINAL SHARE CAPITAL AND THE PAID-UP SHARE CAPITAL OF THE CORPORATE DEBTOR AND/OR DETAILS OF GUARANTEE CLAUSE AS PER MEMORANDUM OF ASSOCIATION (AS APPLICABLE)	
5.	ADDRESS OF THE REGISTERED OFFICE OF THE CORPORATE DEBTOR	
6.	NAME, ADDRESS AND AUTHORITY OF PERSON SUBMITTING APPLICATION ON BEHALF OF OPERATIONAL CREDITOR (ENCLOSE AUTHORISATION)	
7.	NAME AND ADDRESS OF PERSON RESIDENT IN INDIA AUTHORISED TO ACCEPT THE SERVICE OF PROCESS ON ITS BEHALF (ENCLOSE AUTHORISATION)	
8.	DETAILS OF THE CORPORATE DEBTOR AS PER THE NOTIFICATION UNDER SECTION 55 (2) OF THE CODE – (i) ASSETS AND INCOME (ii) CLASS OF CREDITORS OR AMOUNT OF DEBT (iii) CATEGORY OF COPRPORATE PERSON <i>(WHERE APPLICATION IS UNDER CHAPTER IV OF PART II OF THE CODE)</i>	

Part - III

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL [IF PROPOSED]	
1.	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE PROPOSED INSOLVENCY PROFESSIONAL

Part-IV

PARTICULARS OF OPERATIONAL DEBT	
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)

Part-V

PARTICULARS OF OPERATIONAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]	
1.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)
2.	DETAILS OF RESERVATION / RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS
3.	PARTICULARS OF AN ORDER OF A COURT, TRIBUNAL OR ARBITRAL PANEL ADJUDICATING ON THE DEFAULT, IF ANY (ATTACH A COPY OF THE ORDER)
4.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY (ATTACH A COPY OF SUCH RECORD)

5.	DETAILS OF SUCCESSION CERTIFICATE, OR PROBATE OF A WILL, OR LETTER OF ADMINISTRATION, OR COURT DECREE (AS MAY BE APPLICABLE), UNDER THE INDIAN SUCCESSION ACT, 1925 (10 OF 1925) (ATTACH A COPY)
6.	PROVISION OF LAW, CONTRACT OR OTHER DOCUMENT UNDER WHICH OPERATIONAL DEBT HAS BECOME DUE
7.	A STATEMENT OF BANK ACCOUNT WHERE DEPOSITS ARE MADE OR CREDITS RECEIVED NORMALLY BY THE OPERATIONAL CREDITOR IN RESPECT OF THE DEBT OF THE CORPORATE DEBTOR (ATTACH A COPY)
8.	LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF OPERATIONAL DEBT AND THE AMOUNT IN DEFAULT

I, [*Name of the operational creditor / person authorised to act on behalf of the operational creditor*] hereby certify that, to the best of my knowledge, [*name of proposed insolvency professional*], is fully qualified and permitted to act as an insolvency professional in accordance with the Code and the rules and regulations made thereunder. [WHERE APPLICABLE]

[*Name of operational creditor*] has paid the requisite fee for this application through [*state means of payment*] on [*date*].

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor
Name in block letters
Position with or in relation to the operational creditor
Address of person signing

Instructions

Please attach the following to this application:

- Annex I Copy of the invoice / demand notice as in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 served on the corporate debtor.
- Annex II Copies of all documents referred to in this application.
- Annex III Copy of the relevant accounts from the banks/financial institutions maintaining accounts of the operational creditor confirming that there is no payment of the relevant unpaid operational debt by the operational debtor, if

available.

Annex IV Affidavit in support of the application in accordance with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Annex V Written communication by the proposed interim resolution professional as set out in Form 2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. *[WHERE APPLICABLE]*

Annex VI Proof that the specified application fee has been paid.

Note: Where workmen/employees are operational creditors, the application may be made either in an individual capacity or in a joint capacity by one of them who is duly authorised for the purpose.

Form B
PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES

(Under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

[Date]

To

The Interim Resolution Professional / Resolution Professional

[Name of the Insolvency Resolution Professional / Resolution Professional]

[Address as set out in public announcement]

From

[Name and address of the operational creditor]

Subject : Submission of proof of claim.

Madam/Sir,

[Name of operational creditor], hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of *[name of the corporate debtor]*. The details for the same are set out below:

PARTICULARS		
1.	NAME OF OPERATIONAL CREDITOR	
2.	IDENTIFICATION NUMBER OF OPERATIONAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	
3.	ADDRESS AND EMAIL ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE	
4.	TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	

PARTICULARS		
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED.	
6.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS	
7.	DETAILS OF HOW AND WHEN DEBT INCURRED	
8.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	
9.	DETAILS OF <ol style="list-style-type: none"> a. any security held, the value of security and its date, or b. any retention of title arrangements in respect of goods or properties to which the claim refers 	
10.	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	
11.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NON-PAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	
Signature of operational creditor or person authorised to act on his behalf		
<i>[Please enclose the authority if this is being submitted on behalf of an operational creditor]</i>		
Name in BLOCK LETTERS		
Position with or in relation to creditor		
Address of person signing		

*PAN number, passport, AADHAAR Card or the identity card issued by the Election Commission of India

DECLARATION

I, [*Name of claimant*], currently residing at [*insert address*], hereby declare and state as follows:-

1. [*Name of corporate debtor*], the corporate debtor was, at the insolvency commencement date, being the day of 20....., actually indebted to me in the sum of Rs. [*insert amount of claim*].
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: [*Please list the documents relied on as evidence of claim*].
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[*Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim*].

Date :

Place : (Signature of the claimant)

VERIFICATION

I, [*Name*] the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified aton this day of, 20.....

(Signature of the claimant)

[*Note : in the case of company or limited liability partnership, the declaration and verification shall be made by the director / manager / secretary and in the case of other entities, an officer authorized for the purpose by the entity*].

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MF-104, Ajay Tower, E5/1 (Commercial), Arera Colony, Bhopal – 462 016 (MP) INDIA

Website – www.indialegalhelp.com

E-mail – info@indialegalhelp.com

Cell: (+91 / 0) 94250 09280 (Anil Chawla)

Note: This Guide is Free. However, generally speaking, we do not provide free legal advice. Kindly consult your advocate for assistance / advice on any specific matters.

We follow a transparent system for fees. Please look at our [Indicative Rates](http://www.indialegalhelp.com/files/indicativerates.pdf) (<http://www.indialegalhelp.com/files/indicativerates.pdf>) before contacting us.