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on MSME Registration and Disclosure
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INSOLVENCY & BANKRUPTCY

Insights on the Proposed Amendments on MSME Registration and Disclosure under CIRP

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The Insolvency and Bankruptcy Board of India (IBBI) released a discussion paper on 23rd August, 2024, seeking comments on proposed changes to the Regulation 36 of CIRP Regulations. We have summarized our views and recommendations on the proposed amendment as follows:

Proposal :- Proposal on MSME Registration and Disclosure Framework under CIRP

The proposal suggests amending Regulation 36 of the CIRP Regulations to require disclosure of the status of the corporate debtor's in terms of being MSME or not. If the documents with the RP indicate that the corporate debtor qualifies as an MSME, the RP may generate the Udyam Registration Certificate on a case-by-case basis before making the disclosure in the IM. The amendment aims to reduce information asymmetry in the resolution process, encourage greater participation from potential resolution applicants, particularly those interested in MSMEs, and improve value maximization by attracting applicants drawn to the unique benefits of MSMEs.

Our View:

The proposed regulation is a welcome move and would certainly aid in increasing the chances of revival of MSMEs, as the clear disclosure of the MSME status of the corporate debtor at the outset itself would attract applicants who are genuinely interested in bidding for MSMEs due to diverse perks offered by government. Increased participation from resolution applicants would lead to better competitive bids, thus maximising the value of the assets of the corporate debtor which is the core intend of the IBC.

However, there are potential shortcomings in the proposed proviso. The proposal to allow the RP to generate the Udyam Registration Certificate on a case-by-case basis may lead to inconsistency in implementation. Considering the fact that MSME sector has emerged as a very important sector of the Indian economy, crucial for providing large employment opportunities, also contributing significantly to employment generation, innovation, exports, and inclusive growth of the economy, it should be made mandatory for the RP to register the CD as MSME, wherever possible. The discretion of RP's in determining whether to pursue the registration could result in varied practices, potentially leading to further disputes or delays and loss of opportunities to recognize as MSME. We would therefore suggest following changes in the proposed proviso :

Provided that in case, based on available documents, Corporate Debtor meets criteria for being classified as micro, small, or medium enterprises, the resolution professional may shall get the Udyam Registration Certificate generated, ~~on case to case basis~~ before disclosing corporate debtor's classification in the information memorandum.

Further, there are likelihood that this proviso would be misused by the defaulter promoters/directors in collusion with the RP to retain control of the CD under the garb of resolution of MSMEs. Such a scenario can be dealt by restricting the benefit of section 240A of IBC to third party – resolution applicants only, if the MSME registration of the CD is done by the RP during CIRP. This would also encourage the management of MSMEs to be more vigilant and timely register the CD as MSME to avail benefits under the IBC.

In conclusion, while the amendment is beneficial in improving transparency and reducing information asymmetry, its success would depend on consistent implementation and addressing procedural issues RPs may face.