

NOVEMBER 2018

THE INSOLVENCY PROFESSIONAL

YOUR INSIGHT JOURNAL



INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA

Overview

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA ICAI) is a section 8 company incorporated under the Companies Act 2013 promoted by the Institute of Cost Accountants of India.

We are the frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI). We are given the responsibility to enroll and regulate Insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder and grant membership to persons who fulfill all requirements set out in its byelaws on payment of membership fee.

We are established with a vision of providing quality services and adhere to fair, just and ethical practice in performing its task which doesn't restrict only to enrolling but also to monitoring, training and educating the professionals registered with it.

We constantly endeavor to disseminate information in aspect of Insolvency and Bankruptcy code to Insolvency professionals by conducting Round tables, webinars and sending daily newsletter namely "IBC au courant" which keeps the insolvency professionals updated with the news on Insolvency and bankruptcy code.

In our journey of creating a workforce of Insolvency Professionals, we have recently launched Preparatory educational course that provides skill and knowledge which is required to prepare for Insolvency Professional Examination.

BOARD OF DIRECTORS

CHAIRMAN

TCA Ranganathan

INDEPENDENT DIRECTORS

Mr. Ajay Kumar Jain

Mr. Neeraj Aarora

Mr. Satpal Aarora

Mr. Harish Chander

OTHER DIRECTORS

CMA Amit Anand Apte

CMA Sanjay Gupta

CMA Ajay Joshi

Dr. Iyyanadar Ashok

CMA Manas Kumar Thakur

EDITOR & PUBLISHER

Dr. S.K. Gupta

EDITORIAL BOARD

Mr. Ravinder Agarwal

Mr. Rajkumar Adukia

Mr. Risham Garg

Mr. Madhusudan Sharma

INDEX

MESSAGE	1-2
• From the MD & CEO's Desk	1-2
PROFESSIONAL DEVELOPMENT INITIATIVES ARTICLES	3-6
ARTICLES	7-34
• Perspectives On Economic Dimensions Of Bankruptcy	7
• Getting an Assignment as IP	17
• Framework for Procuring Professional Support	32
PRACTICUS QUESTE	35-37
JUDICIAL DECLARATION	38-46
• M/s OCEANIC TROPICAL FRUITS PRIVATE LIMITED Vs. ICICI BANK LIMITED	38
• M/s MANOR FLOATED LIMITED Vs. IDBI BANK LIMITED	38
• M/s HAHNEMANN HOUSING AND DEVELOPMENT PRIVATE LIMITED Vs. SHRI SUPRIYO RANA	39
• M/s KAMINENI STEELS AND POWER INDIA PRIVATE LIMITED Vs. INDIAN BANK, ALLAHABAD BANK, ETC	41
• PARTE CASTERS PRIVATE LIMITED Vs. STATE BANK OF INDIA	41
• M/s RAVE SCANS PRIVATE LIMITED Vs. INDIAN OVERSEAS BANK AND OTHERS	42
• M/s FENACE AUTO LIMITED Vs. VESUVIUS INDIA LIMITED	43
• M/s SUN PAPER MILL LIMITED Vs. M/s AGARWAL COAL CORPORATION PRIVATE LIMITED	44
• M/s SURANA INDUSTRIES LIMITED Vs. IDBI CAPITAL MARKETS & SECURITIES LIMITED	45
• UNIVERSAL POWER TRANSFORMERS PRIVATE LIMITED Vs. NLMK INDIASERVICE CENTRE PRIVATE LIMITED	46
POLICY ACTUALIZAR	47-53
• The Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018	47
• Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) (Second) Guidelines, 2018	49

The Insolvency Professionals - *Your insight journal*

Content Contributor:
Ms. Jyotsana Kakkar

Insolvency Professional Agency of The Institute of Cost Accountants of India has launched its Monthly Journal in September, 2018. Any views expressed by contributors to the articles are their own and Insolvency Professional Agency of The Institute of Cost Accountants of India does not accept any responsibility. All rights are reserved and no part of the journal may be reproduced or copied in any form by any means without the written permission of Insolvency Professional Agency of The Institute of Cost Accountants of India. For subscription to the monthly journal and contribution to the articles on subject of interest to Insolvency Professionals in the journal drop a mail at: ra@ipaicmai.in



From the MD & CEO's desk **CMA DR S. K. GUPTA**

Capitalism without bankruptcy is like Christianity without hell The Perspective – Basic economic problem

We have unlimited human desires and wants and yet we have only scarce resources to meet them. We must therefore have some allocation process of those assets. So, our asset allocation process--whatever it is, this is true of market and planned approaches--is going to have some scarce resources devoted to projects which don't work out. What we need therefore is a system by which we can pluck those scarce resources out of the inefficient usage and reallocate them, possibly more productively this time. That's what, in general terms, we call the bankruptcy process.

IBC – a game changer

Insolvency & Bankruptcy Code is formulated to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders

Tasked with a key job of helping recover unpaid corporate loans, the NCLT has helped resolve insolvency and bankruptcy proceedings involving more than Rs 80,000 crore in the year passing-by and the kitty is expected to swell beyond Rs1 lakh crore in 2019 with several big-ticket default cases pending.Plans are afoot to further strengthen the National Company Law Tribunal (NCLT) by increasing number of judges and benches and provide adequate infrastructure to fast-track the process, according to government officials.As per estimates, the IBC has helped address stressed assets worth approximately Rs 3 lakh crore — directly or indirectly — since the new law came into force in December 2016. The estimated amount includes recoveries made through resolution plan and cases settled before admission by the NCLT.

In 2018, insolvency proceedings against some companies including Bhushan Steel, ElectroSteel Steel, Binani Cement were almost completed and the new management from their successful bidders — Tata Steel, Vedanta group and Aditya Birla-led UltraTech, respectively — have taken over the management control of the stressed assets.Big Corporate houses including Arcelor Mittal, Tata Steel, Reliance, UltraTech Cement, UK-based Liberty Group, Vedanta group, Dalmia Bharat group were among the leading companies which had submitted their resolution plans to acquire the debt ridden firms.Other major insolvency cases being handled by the NCLT and the NCLAT include RCom, Videocon group, Alok Industries, Lanco Infrateck, Jaypee Infrateck, Jyoti Structures and ABG Shipyard.

The new year will not only test the mettle of the Insolvency and Bankruptcy Code (IBC), but also of the NCLT and its appellate body NCLAT, as several high-profile cases need to be resolved — Essar Steel (involving over Rs 80,000 crore alone) and Bhushan Power & Steel (about Rs 45,000 crore due to its lenders) are just a few, experts said.

In 2019, the NCLT is expected to finalise corporate insolvency resolution process of several stressed assets through its 11 functional benches across India. These cases would include Essar Steel, Bhushan Power & Steel, Videocon Group, Monnet Ispat, Amtek Auto, Ruchi Soya, Lanco Infratech, Jaypee Infratech among others. The new year is likely to “test the mettle of the IBC as well as of the NCLT and NCLAT.

The way forward

IBC should be seen as a legislation focused on ‘resolution’ and not one intended for ‘recovery’. The implementation of insolvency and bankruptcy code (IBC) process will be one of the key determinants of growth in the financial year 2018-19. If this process moves ahead expeditiously, stressed firms will be put in the hands of stronger ownership, allowing them to resume spending. However, if resolution is delayed, private capex cycle will also be disrupted, leading to impacting public investment.

Though it is true that there are various gaps which need to be filled and various practical difficulties which need to be addressed under IBC, it has so far proved to be effective in meeting its purpose. As this law evolves, it is likely to further boost India Inc’s corporate governance practices and help the country optimally address the widespread problem of mounting corporate debt.

IBC remains an epitome of benchmarks and learnings at the same time.

Happy reading !

Dr. S K Gupta

PROFESSIONAL DEVELOPMENT INITIATIVES

INITIATIVES IN THE MONTH OF NOVEMBER, 2018:

- ✓ Round table on Corporate Insolvency Resolution Process, Liquidation and Preferential, Fraudulent, Undervalued and Extortionate Transactions at CMA Bhawan, Kolkata on 2nd November, 2018 .
- ✓ Round table discussion on 9th November from 6.00 pm - 8.00 p.m on "Regulation on Bankruptcy Process for Personal Guarantors" at Kolkata on 9th November, 2018.
- ✓ Pre-Registration Educational Course 8th Batch in Delhi NCR from 15th to 21st November, 2018.
- ✓ Associate partner for "Corporate Insolvency Law Practicum: Training of Trainers (ToT)" on 14th – 15th November, 2018.
- ✓ Pre-registration Education Course at Hyderabad from 25th November, 2018 to 1st December, 2018.
- ✓ Pre-Registration Training for Insolvency professionals at Mumbai" from 29th November.

Key Speakers for the Roundtables & Workshops conducted:

Dr. M.S. Sahoo (Chairperson IBBI) - Roundtable discussion on "Regulation on Bankruptcy Process for Personal Guarantors".

Mr. Navrang Saini, Whole time member of IBBI- Roundtable discussion on Corporate Insolvency Resolution Process, Liquidation and Preferential, Fraudulent, Undervalued and Extortionate Transactions.

INITIATIVES IN THE MONTH OF DECEMBER, 2018

- ✓ Insolvency Professionals Conclave at Hyderabad on 1st December, 2018.
- ✓ Webinar on 'Online Disclosure Module & New Monitoring Policy of IPA ICAI (Cost)' on 6th December, 2018."
- ✓ Webinar on 'Facility for storage and retrieval of Information for Insolvency professionals provided by NeSL' on 11.12.2018.
- ✓ Round Table Interaction on Draft Specimen of Evaluation Matrix and Information Memorandum on 11th December, 2018.
- ✓ Round Table Interaction on Draft Specimen of Request for Resolution Plans and Resolution Plan on 14th December, 2018.
- ✓ Awareness Program on IBC, 2016 at Guwahati on 14th December, 2018
- ✓ Awareness Program on IBC, 2016 at Shillong on 15th December, 2018
- ✓ Round Table Interaction on Draft Specimen of Request for Resolution Plans and Resolution Plan on 18.12.2018
- ✓ Workshop on IBC, 2016 for Insolvency Professionals at Pune on 21st-22nd December, 2018
- ✓ Preparatory Educational Course for Limited Insolvency Examination by IPA ICAI w.e.f. 29.12.2018



Roundtable on Corporate Insolvency Resolution Process, Liquidation and Preferential, Fraudulent, Undervalued and Extortionate Transactions at CMA Bhawan, Kolkatta on 2nd November, 2018.



Round table discussion on 9th November from 6.00 pm - 8.00 p.m on "Regulation on Bankruptcy Process for Personal Guarantors" at Kolkata on 9th November, 2018.



Mr. Navranj Saini, Whole time member of IBBI- Roundtable discussion on Corporate Insolvency Resolution Process, Liquidation and Preferential, Fraudulent, Undervalued and Extortionate Transactions at Kolkata.



Dr. M.S. Sahoo (Chairperson IBBI)- Roundtable discussion on "Regulation on Bankruptcy Process for Personal Guarantors".



Associate partner for "Corporate Insolvency Law Practicum: Training of Trainers (ToT)" on 14th – 15th November, 2018.



Dr. M.S. Sahoo Chairperson OF IBBI at Corporate Insolvency Law Practicum: Training of Trainers (ToT)" on 14th – 15th November, 2018.



Pre-Registration Training for Insolvency professionals at Mumbai.



Pre-Registration Training for Insolvency professionals at Mumbai from 29th November.

IBC AU COURANT

Insolvency Professional Agency of Institute of Cost Accountants of India



Our Daily Newsletter which keeps the Insolvency Professionals updated with the news on Insolvency and Bankruptcy code

To subscribe our daily newsletter please visit: www.ipaicmai.in

A close-up photograph of a person's hand holding a black pen, writing on a white document. The hand is positioned on the left side of the frame. In the background, another hand is visible, resting on the document. The image is overlaid with large, white, semi-transparent circles. The word "ARTICLES" is written in a bold, white, sans-serif font across the center of the image.

ARTICLES



PERSPECTIVES ON ECONOMIC DIMENSIONS OF BANKRUPTCY



Dr. SK Gupta
M.Com, FCS, FCMA,
Ph.D, MD & CEO IPA
of Institute of Cost
Accountants of India



Taranbir Singh
Research Analyst-
IBBI

Abstract:

This paper analysis the existing bankruptcy procedures in various countries and discusses pre and post effects of bankruptcy on various stakeholders. We also propose further reforms of systemic bankruptcy, namely: Super Bankruptcy Code & Contingent Capital (CoCo) for enhancing economic efficiency of bankruptcy process.

Key Words:

Bankruptcy, Liquidation, Reorganization, Creditors, Corporate debt

1. Introduction:

“Capitalism without bankruptcy is like

Christianity without hell.” By Frank Borman

Corporate bankruptcies are common. While all entrepreneurs are interested in success, unfortunately a majority of their ventures fail and many end up in bankruptcy. Entry and exit are fundamental underpinnings of the competitive process. They ensure that a sufficient number of firms remain in an industry, and produce efficiently, in order to satisfy the market demand at a competitive price. The competitive process results in the flow of resources into efficient units and out of inefficient ones - a process which may also be interpreted as 'entry' and 'exit'.

The process of exit, whatever form it takes, is set in motion by either the firm itself (usually the managers) or by its creditors. The more common forms of exit - the flow of resources out of an activity taking place in downsizing and restructuring, mergers and takeovers - are generally planned and implemented by the management on behalf of the firm's owners. But the more drastic forms of exit - entering the bankruptcy proceeding with the possibility of liquidation - are usually forced upon the firm by its creditors or by legal provisions aimed at protecting the interest of creditors.

The bankruptcy procedure is usually triggered off when a firm default on its debt. But the procedure does not necessarily lead to the exit of the firm, or even the exit of some production capacity. Liquidation (or exit in the strict sense of the term) is only one option faced by the management. In this case, the bankruptcy procedures specify the manner in which the firm in the liquidation process is either sold as a going concern or its assets are disposed of piece by piece, in order to repay the claimants in accordance with the Absolute priority rule. Alternatively, the bankruptcy procedures may allow the management to choose the option of 'reorganization' or restructuring which is aimed at finding a method of rescuing the firm from financial distress and salvaging all or parts of it for the benefit of all claimants. Typically, it involves a process of negotiation between debtors and creditors with a view to establishing a new mechanism for the settlement of claims which may be different from the APR: writing off some of the claims, injection of new capital, swapping new equities for old ones, exchanging bonds and other debts with new notes, bonds or cash, etc. In short, it amounts to a re-writing of the debt contracts of different groups of claimants

and creditors (Balcerowicz, Gray, & Hoshi, 1998).

Liquidation and bankruptcy are often discussed in the literature as though they are related. is process of dismantling the firm's assets and selling them (either piecemeal or in their) to new management teams. Liquidation is optimal when the value of the firm's existing resources is in alternative uses. Hence liquidation should be viewed as a capital budgeting decision that is independent of the way in which the firm is financed. For the past one hundred and fifty years or so, bankruptcy laws have generally attempted to achieve two separate and conflicting ends. The first is to protect creditors and encourage lending by creating greater certainty about debt repayment in the event of a business failure. The second is to encourage and business development with the possibility of providing second chances in the event of business failure.

Standard microeconomic theory has little to say about bankruptcy. For example, among leading textbooks neither Samuelson's Economics nor Alchian and Allen's University Economics list the word "bankruptcy" in their indexes. Alchian and Allen discuss entry but do not list exit in their index. Samuelson lists neither entry nor exit. Yet the theory of atomistic competition accords an important role to entry and exit in adjusting long-run supply and demand and allocating resources efficiently. A theory of how firms function, which is critical to the formulation of principles for the evaluation of bankruptcy laws, is not found in any of these.

The variety of ways in which assets are restructured in bankruptcy suggests that the traditional distinction between "reorganization" and "liquidation" in the academic literature – and the presumption that asset

sales/liquidations generate less value for creditors than reorganizations – has become increasingly less meaningful. This distinction is further blurred when investors buy debt in a bankrupt firm with the goal of exchanging it for a controlling equity stake under a plan of reorganization. This strategy gives the investor effective control of the assets, and economic ownership that is equivalent to having purchased the business directly.

In one word, the market approach to the financial problem is bankruptcy. Firms go bankrupt when they do not have enough capitation to pay their bills. Bankruptcy is a normal part of economic life, covered by laws that guarantee stockholders will be compensated as much as possible. More efficient firms move in to take over what is left of bankrupt firms, buying what can be put to productive use.

2. Bankruptcy Codes – International perspective

Bankruptcy codes vary substantially across countries in terms of the degree of creditor rights and control in the bankruptcy process. Part of the variation is rooted in the differences in countries' legal origins, which influence the legal rules and law enforcement. In this section comparative salient features of the bankruptcy laws in various developed and developing countries with different legal origins are discussed:

(a) **US:** Rationale behind the bankruptcy procedure is “debtor-oriented”, where survival of the firm, saving jobs, and retaining firm’s productive capacities is weighted more than opting for liquidation. In Chapter 11(the reorganization option) of the US bankruptcy code, the automatic stay provision stops creditors from collecting principal and interest payments

and from seizing collaterals. The debtor-in possession provision allows the debtor to retain control of the firm and provides it with the exclusive right to propose a reorganization plan in the first 120 days after the bankruptcy filing. Then the reorganization plan must be approved by all classes of creditors, the equity holders, and the court. To surmount the atavistic risk-taking behavior by the management and protect creditors, the plan is drafted with restrictions: for example, a threshold debt-asset ratio or market valuation beyond which automatic sanctions come into effect (Balcerowicz et al., 1998).

(b) **United Kingdom:** In comparison to US, rationale behind the bankruptcy procedure is “creditor-oriented”, where creditor’s interests are given priority than debtor’s and firm’s management loses its unquestioned rights to manage the firm’s assets during proceedings. In.. The 1986 Insolvency Act offers the management and creditors of an insolvent firm several options: liquidation, or all of which involve the appointment of an insolvency practitioner to protect the interests of creditors. One important distinguishing feature of the UK procedures is the fact that the reorganization plan is prepared by the administrator and not by the management.

(c) **Germany:** In Germany, the receiver is appointed by the bankruptcy court rather than by creditors. The receiver does not represent any single group of creditors but is bound by the resolution of the creditors’ meeting. The receiver overlooks the debtor’s operations and proposes the reorganization plan. In larger bankruptcy cases, the receiver generally develops the reorganization plan in cooperation of a creditors’ committee. Then the plan must be approved by creditors through majority voting. There is up to three months of

automatic stay against secured creditor claims.

(d) **Sweden:** According to the Swedish bankruptcy system all bankrupt firms are auctioned off by the bankruptcy court either as a going concern or piecemeal. The incumbent management team is immediately replaced by an independent, court-appointed trustee with a "fiduciary responsibility towards creditors. The trustee organizes the sale of the "firm's assets in an open ascending English-style auction, either piecemeal or as a going concern. A going concern sale takes place by merging the assets and operations of the "firm into a receiving company which is either established or held by the buyer. The auction typically attracts 3-4 bidders, and payments are restricted to cash only. The bulk of cash represents bank debt "financing provided to the buying corporation, much like in a leveraged buyout. As under Chapter 11, the operations of a "firm in auction bankruptcy are protected through automatic stay of creditors. In other words, once the trustee takes over, debt service is halted, and creditors cannot seize collateral.

(e) **France:** In France we go to the other end of the creditor control spectrum. The bankruptcy court has full control of the bankrupt firm and the whole bankruptcy process. The objectives of the court are, in the order of priority, to maintain firms in operation, preserve employment, and satisfy creditors' claims. The emphasis on continuing operations and employment does not necessarily imply that the bankruptcy system favors shareholders. The court may make decisions that maximize employment stability at the cost of both shareholders and creditors. The court appoints a judicial administrator, who assesses the viability of the firm, proposes a reorganization plan, and makes

all the important decisions about the firm. Incumbent management is generally retained but is under the supervision of the administrator. More importantly, the administrator does not represent the interest of creditors. The only way for creditors to convey their concerns is through non-binding recommendations to a court-appointed creditor representative, who may then make non-binding recommendations to the court.

(f) **Brazil:** In Brazil, creditors' priority in the case of corporate bankruptcy is substantially enhanced. Tax, labor, and other liabilities are not transferred to the buyer of a liquidated property, which increases the market value of the distressed firms' assets and thus increase recovery for creditors. There is a 180-day automatic stay on assets management makes a reorganization proposal, which must be approved by creditors. Finally, the new law also introduces an out-of-court reorganization procedure and addresses issues related to managerial frauds in the reorganization process.

(g) **Spain:** Spain has one of the world's lowest business bankruptcy rates, i.e., number of business bankruptcies divided by the total number of firms in the economy. The low efficiency of the Spanish bankruptcy system relative to that of an alternative insolvency institution, the mortgage system, induces firms to avoid filing for bankruptcy. In other words, holding mortgage debt is a very effective "bankruptcy-avoidance" activity in Spain.

(h) **India:** The Insolvency and Bankruptcy Code, 2016 (IBC) seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy. The Code according to some experts is a landmark piece of legislation establishing a robust legal framework which brings about a

much overdue reform that is aimed at creating necessary procedures for swift resolution of insolvency and bankruptcy in India. It attempts at bringing the Indian statutory regime at par with some of the most legally advanced jurisdictions of the world.

3. Economic Implications of Bankruptcy

Bankruptcy is a complicated and difficult process, and research suggests that in most countries existing bankruptcy regimes do not perform very well. (Djankov et al., 2008). A survey of insolvency practitioners from 88 countries on debt enforcement indicates that bankruptcy procedures are time-consuming and costly. In only 36% of countries, the business is preserved as a going concern, and an average of 48% of the business' value is lost in debt enforcement. In developing countries simpler procedures such as quick foreclosure and transfer of control of the firm to secured creditors work best, whereas more elaborate procedures including reorganization (which is most likely to preserve the business as a going concern), are likely to be more successful in richer countries with greater capacity for enforcement. A study of 37 industrial and developing countries finds that during the 1990s, bankruptcies are higher in countries with Anglo-Saxon legal systems, greater judicial efficiency, market-oriented financial systems (characterized by multiple banking relationships), and overall greater economic development.

Modern firms are characterized by a web of formal and implicit contracts which integrate and articulate the interests of different parties with claims on a firm's assets. The interested parties, or claimants, include the firm's creditors with varying degrees of seniority: government, banks or creditors with secured collateral,

employees, ordinary bondholders and unsecured creditors, customers, suppliers and, of course, managers and shareholders. These formal and implicit contracts are part and parcel of the system of property rights in developed market economies. Their operation is facilitated through the financial system and financial markets.

The distressed firm may embark on formal or informal negotiations with its creditors with a view to work out a program of rehabilitation by rescheduling its debts and rearranging its financial status. Such programs usually involve restructuring of the firm including downsizing and the closure of loss-making operations. Here, too, there will be some 'exit of resources' from the industry. Another possibility facing the financially distressed firm, of course, is its liquidation- the physical exit of the firm from the market - which is embarked upon when all other venues are closed. A central tenet in economics is that competition drives markets toward a state of long-run equilibrium in which those firms remaining in existence produce at minimum average costs. Economic theory suggests that bankruptcy should serve as a screening process designed to eliminate only those firms that are economically inefficient and whose resources could be better used in some other activity.

Bankruptcy law provides a collective framework for simultaneously resolving all debts when debtors' assets are less valuable than their liabilities. This includes both rules for determining which of the debtor's assets must be used to repay debt and rules for dividing the assets among creditors. Thus, bankruptcy is concerned with both the size of the pie – the total amount paid to creditors – and how the pie is divided. The bankruptcy law and

procedures can directly shape aggregate productivity along the exit margin through a variety of channels, including the strength of market selection and the scope and speed at which scarce resources consumed by failing firms can be reallocated to more productive uses. However, since market imperfections often generate obstacles to the orderly exit of failing firms, the efficiency of insolvency regimes emerges as particularly crucial. A challenge confronting policymaker around the world is: How to facilitate bankruptcy process so as to maximize economic positives and minimize its negative economic effects.

(a). Creditor Passivity

The existence of bankruptcy laws will not, in themselves, ensure their application. Laws can only be applied if creditors have an incentive to pursue the debtors and demand their claims. Creditor passivity is one of the main obstacles to a faster restructuring of enterprises on the one hand and the relatively small number of bankruptcies on the other. In many cases, banks prefer to wait and retain some chance of recovering their claims (or parts of them) rather than push the debtor into bankruptcy and receive nothing or very little. More importantly, the loans are part of the 'assets' side of the banks' balance sheet and their writing off will reduce the value of the bank - which is not in the interest of banks' managers. The banks expect that, in the end, enterprise debts will be written off by the government and the banks will be recapitalized, thus the incentive to wait rather than embark on the bankruptcy process. This approach of the banks leads to economically inefficient fall out for the firms under financial stress.

(b). The indirect contribution of the bankruptcy process

Direct measures of the impact of bankruptcy process underestimate its importance in contribution to national prosperity. This is because they fail to account for the 'enabling' role played by the bankruptcy system and procedures. This role includes creating an environment that is conducive to entrepreneurship and appropriate risk taking, while safeguarding creditors.

The bankruptcy system is a very sophisticated and complex institution. One purpose of the bankruptcy process is to certify the change in contractual obligations that insolvency necessitates. But more important from an economic standpoint, the legal process seeks to scrutinize the obligations, position, and prospects of the bankrupt firm with a view to, this contribute to allocative efficiency and growth

(c). The option value of bankruptcy

Debtors' right to file for bankruptcy can be expressed as a put option. If debtors' future wealth turns out to be high, they repay their debts in full; but if their future wealth turns out to be low, they can exercise their option to "sell" the debt to creditors by filing for bankruptcy. The price of exercising the put option is the cost of filing plus the amount that debtors are obliged to.

4. Bankruptcy process and investors interest

In practice, the willingness of banks and investors to support new businesses depends a great deal on the rules that govern failing businesses. Effective insolvency regimes save struggling firms when possible or reallocate assets of failing firms more productively. These procedures focused on the end of the business life cycle have a profound impact on the beginning. Banks and investors are more

willing to lend when they know they can recover at least some of their investment. Entrepreneurs are more willing to enter the market when they are not putting their entire personal fortunes at risk.

5. Time spent on bankruptcy procedure

The cost of bankruptcy is positively related to the length of time spent on the bankruptcy procedure (Bebchuk, 2000; Bris et al., 2006). In a liquidation bankruptcy, a fast procedure allows the quick reallocation of assets of failed firms to better uses. At the same time, a fast procedure can provide an entrepreneur a new opportunity to start a new business. If a firm files reorganization bankruptcy (such as Chapter 11 in the United States), a fast procedure may protect the value of the assets of the firm and improve its chances for an eventually successful turnaround (Bebchuk, 2000). A lengthy process characterized by an uncertain outcome, however, may make business partners (such as buyers and sellers) reluctant to maintain their business relationships. This in turn may reduce earnings and the value of firm assets (LoPucki and Doherty, 2002).

In sharp contrast to the transitional economies of Central and Eastern Europe which are characterized by "creditor passivity", the creditors in a developed market economy have direct and strong incentives to insist on the implementation of the appropriate legal provisions when faced with a defaulting debtor.

6. Cost of bankruptcy procedure

In addition to the lengthy time, the actual cost involved in filing bankruptcy may also make entrepreneurs procrastinate about filing bankruptcy (Bris et al., 2006).

(a). **Direct costs:** are the legal, administrative and advisory fees that the firm bears as a result of entering the formal bankruptcy process. Warner (1977) estimates the direct cost to be around 4% of the firm's pre-bankruptcy value. The World Bank's Doing Business Report finds that in the United States, the direct cost is approximately 7% of the assets of the firm. This underscores Mason's (2005: 1523) argument that costly bankruptcy "can cause sluggish economic growth." In other words, high bankruptcy cost may discourage firms to file bankruptcies even when at the societal level, it may be more valuable for them to go bankrupt so that resources and employees can be channeled toward more productive use.

In theory, direct bankruptcy costs should not be confounded with liquidation costs. The former is the cost associated with using the legal mechanism to resolve financial distress, and the magnitude of this cost is important to assess the impact of bankruptcy on corporate financial policies. The latter is the cost incurred in selling off a firm's assets and closing up the firm's operations

(b). **Indirect Costs:** Potentially more significant and substantial are the indirect costs of financial distress and bankruptcy. These costs can be viewed as opportunity costs, in that they collectively represent the outcome of suboptimal actions by corporate stakeholders when the firm becomes financially distressed. Thus, costs that arise because of inter- or intra-group conflicts of interest, asymmetric information, holdout problems, lost sales and competitive positions, higher operating costs, and ineffective use of management's time all potentially represent the indirect costs of bankruptcy.

Several studies claim the indirect costs of financial distress to be significant and positive. For example, Altman (1984) measures the indirect costs of bankruptcy as the decline in the sales of bankrupt firms relative to others in the same industry and as the difference between the realized earnings and the forecasted earnings. On that basis, the author argues that indirect bankruptcy costs on average range from 11% to 17% of firm value up to three years prior to bankruptcy. However, this study does not clearly distinguish costs attributable to financial distress from those attributable to economic distress.

The empirical magnitude of the indirect costs is central to the consequence corporate bankruptcy. A common sentiment is that the indirect costs are substantially larger than the direct costs. However, these costs are difficult to observe and measure.

7. Before and Aftermaths of Bankruptcy

(a). Impact on supply chain

Bankruptcy not only concerns the firm facing bankruptcy risk, but also other parties in its supply chain. The interaction between bankruptcy and supply chain dynamics is a two-way street: not only could one firm's (potential) bankruptcy have a profound influence on the decisions and performance of other parties in its supply chain, supply chain interactions can also affect the distressed firm's risk of bankruptcy and the bankruptcy outcome.

(b). Contagion effect of bankruptcy

An oft-repeated concern is that bankruptcy is contagious within an industry. The common view is that one firm's bankruptcy makes customers and suppliers wary of the other firms in the same industry

irrespective of their economic health and hence makes them worse off as the bankruptcy announcement reveals negative information about the components of cash flows that are common to all firms in the industry and, consequently, decreases the market's expectation of the profitability of the industry's firms. However, the bankruptcy announcement need not convey only bad news for competitors. It can potentially increase the value of the non-bankrupt firms in the industry by redistributing wealth from the bankrupt firms to their competitors

(c). Valuation effects of bankruptcy announcements

The effect of a bankruptcy announcement on competitors is the sum of the contagion and competitive effects. Whereas in general one would expect the contagion effect to be negative and the competitive effect to be positive, no theoretical argument suggests that one of the effects ought to dominate the other irrespective of the characteristics of the industry. If a bankruptcy is caused mainly by a decrease in efficiency, so that the firm will either emerge from bankruptcy smaller or exit the industry altogether, competitors are likely to benefit. If, on the other hand, a bankruptcy is caused by a decrease in demand or an increase in costs common to all firms in the industry, the contagion effect will dominate as long as the common effect is large enough or the degree of imperfect competition low enough.

(d). Bankruptcy and its effect on stock price

Bankruptcy filing has a strong negative effect on the value of the filing firm's stock. Presumably, the stock price falls because of an increase in the present value

of bankruptcy costs and because the bankruptcy announcement provides information about the true value of the firm's assets and the shareholders' claim on those assets. But a look at the stock-price reaction for the bankrupt firm does not reveal how much of the information in the bankruptcy announcement is firm-specific and how much is industry-wide, nor does it tell us whether other firms in the industry benefit from the difficulties of the bankrupt firm.

8. Proposals for Further Reforms of Systemic Bankruptcy

Two promising avenues for reforms in the resolution of systemic distress, namely super bankruptcy code and contingent capital (CoCo).

(a). Super Bankruptcy Code

The concept of super bankruptcy code was originally introduced by Miller and Stiglitz (1999) which tantamount to mandating private workouts through debt-to-equity conversion. This mechanism is designed to preserve the value of a distressed firm consistent with economic efficiency, to prevent inefficient liquidation that often occurs in a system crisis, and to provide protection against large macroeconomic shocks. The basic presumptions of super bankruptcy are that (a) debt-to-equity conversion will be forced, and (b) current management remains in place. Managers will not be held responsible or penalized to the extent that the crisis stems from macroeconomic shocks. The idea of super bankruptcy is worth looking into, since the positive features are impressive, in that there is the potential to preserve the going-concern value, prevent excessive liquidations, and maintain existing

management with valuable institution specific capital.

(b). Contingent Capital (CoCo)

There is growing attention in academic and regulatory circles for possible adoption of a new regulatory instrument issued by financial institutions in normal times. These instruments are convertible to equity when the issuing firm and the financial system are in crisis. This is unlike a traditional convertible bond that gives a bondholder an option to convert into equity on the upside in the boom times. To the contrary, conversion is automatic and mandatory, and it occurs during stress times, if one or more triggers are met. An example of a trigger is a predetermined threshold of the required bank capital at or below which CoCo would automatically convert.

CoCo is actually similar to the super bankruptcy mechanism, but the debt-to-equity conversion is not mandated by the bankruptcy code. The role of the regulator is to promote such a hybrid security to be issued by financial institutions, and it could do so through incentives in the form of reducing regulatory burden, such as capital requirements. In fact, through automatic conversion into equity, an under-capitalized and/or insolvent bank becomes better capitalized without imposing cost to society. The cost is borne by the investors, and there would be no need for costly bailouts.

9. Conclusion

The fundamental economic efficiency question about the bankruptcy law is whether the law effectively rehabilitates economically efficient but financially distressed firms and liquidates economically inefficient firms. Carefully

planned, surgical bankruptcies or pre-packaged bankruptcies increase the probability of successful outcomes.

In bankruptcy procedures, both debt and fault are bargained in a way that interlinks the three temporal dimensions: past, present, and future. How were past expectations about the future (e.g. profit expectations) narrated at a moment when the risk had been realized and had become a loss? How was this past idea of the future reconstructed and evaluated? How were ideas of the future constructed during the procedure, at a moment where compromised transactions had to be re-evaluated? How did the actors narrate the prospects of the business? How was the moment of insolvency determined, a question relevant both for the commercial and criminal procedure? Did the suspension of payment and the formal rehabilitation represent clearly defined turning points isolating a before and an afterwards of bankruptcy.

Since all businesses which avail themselves to bankruptcy protection do so with the spectre of ending in liquidation in which case all economic activity previously associated with that business ceases and it is as if it was never in business for the purpose of measuring economic activity and impact. Conversely, when a business is restructured there is a potential for jobs to be retained, continued positive economic activity, equity maintenance and even wealth creation. Effectively, this is no different than if a new business had come into being for the first time. It is worth noting that many bankruptcies arise from temporary circumstances, such as economic downturns, which can cause businesses to fail. But downturns and market changes may reverse over time, which may in turn allow the business to once again prosper. It is therefore

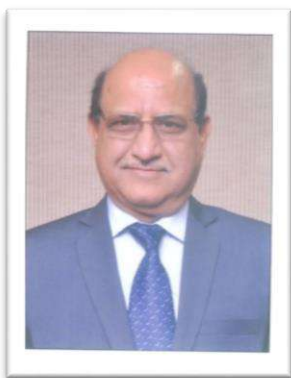
enjoined upon all the parties involved in the bankruptcy process to look at the micro and macroeconomic dimensions and effects of bankruptcy with a view to ensuring an economically efficient and effective culmination of the exit process.

When bankruptcy code is creditor friendly, excessive liquidations cause levered firms to shun innovation, whereas by promoting continuation upon failure, a debtor-friendly code induces greater innovation. Bankruptcy law not only affects financially distressed corporations and their creditors, but also their workers and competitors but the entire economy. What is crucial for the economy is that firms with a chance of survival should not go bankrupt prematurely. The optimum rate of is one that involves least cost to the society as a whole, and results in the preservation of firms over a longer time period than that dictated by short term financial considerations.

References

- The economics of bankruptcy reform. Journal of Law, Economics, & Organization* 8, 523-546. Aivazian, Varouj A. and Simiao Zhou, 2012.
- Altman, Edward, 1984. A further empirical investigation of the bankruptcy cost question. *Journal of Finance* 39, 1067-1089.
- Altman, Edward I. and Edith S. Hotchkiss, 2006. *Corporate Financial Distress and Bankruptcy*, 3rd edition, John Wiley & Sons, Hoboken, NJ. Andrade, Gregor, and Steven N. Kaplan, 1998.
- Balcerowicz, L., Gray, C. W., & Hoshi, I. (1998). *Enterprise exit processes in transition economies: downsizing, workouts, and liquidation*. Central European University Press.
- Bebchuck, Lucian, 2002. Ex ante costs of violating absolute priority in bankruptcy. *Journal of Finance* 57, 445-460.
- Berkovitch, Elazar, and Ronen Israel, 1999. Optimal bankruptcy laws across different economic systems. *Review of Financial Studies* 12, 347-377
- Davydenko, Sergei, and Julian R. Franks, 2008. Do bankruptcy codes matter? A study of defaults in France, Germany, and the UK. *Journal of Finance* 63, 565-608.
- Franks, Julian R., Kjell G. Nyborg, and Walter N. Torous, 1996. Comparison of US, UK and German insolvency codes. *Financial Management* 25, 86-101
- Haugen, Robert A. and Lemma W. Senbet, 1978. The insignificance of bankruptcy costs to the theory of optimal capital structure. *Journal of Finance* 33, 383-392

GETTING AN ASSIGNMENT AS IP



Mr. Deepak Maini
Insolvency Professional
Ex GM- Punjab & Sind Bank

This article is intended to provide guidance for getting an assignment as Insolvency Professional

Empanelment with Banks

Most of the public sector Banks and Financial Institutions prepare a specific panel out of IBBI registered Insolvency Professionals for assigning them Insolvency cases arising out of their respective Banks/Institutions.

It may appear surprising that although being registered with the Insolvency & Bankruptcy Board of India, why there is requirement for a separate

empanelment of Insolvency Professional by Individual Banks.

For empanelment most of the Banks are requiring that the IP must be already empaneled with one Bank and/or has handled one Insolvency case as Interim Resolution Professional/Resolution Professional.

Most of the public sector Banks have come out in the past one year with notices either through Newspaper or through their official website asking Insolvency Professionals to apply for

empanelment as per their prescribed formats.

For the guidance of new entrant IPs, the easiest way to get a CIRP assignment is becoming IRP in the case filed by operational Creditor under Section-9. They can also be in touch with their Corporate clients who may be interested in CIRP application themselves under section 10, or voluntary liquidation application under section 59, of Insolvency & Bankruptcy Code, 2016. Besides, Many NBFCs & ARCs are also moving CIRP application with NCLT very often and this can be a good source for getting the assignment and of course after certain amount of liasoning.

The fact that some NCLTs are putting conditions of not allotting more than 3 or 4 cases per IRP/RP opens window for new comers. As existing experienced IPs are getting saturated, the Banks need to look at the freshers also. Some Banks have also done second round of empanelment process as number of cases identified to be referred to NCLT by them have gone up substantially.

A sample of Format for applying for empanelment in one of the Public Sector unit is as per is given below:

(Sample Format for submission of EOI)

To,
The Deputy General Manager – (Law),

Dear Sir/Madam,

Sub: Application for empanelment as Insolvency Resolution Professional with reference to advertisement dated and displayed on website of (Name of Bank)

I, _____, S/o/D/o Sri/Smt. _____ is authorized to act as Interim Resolution Professional by the Insolvency and Bankruptcy Board of India (IBBI) under the provisions of the Insolvency and Bankruptcy Code, 2016 and the regulations thereof. I have been granted the certificate of registration by the Insolvency and Bankruptcy Board of India (IBBI) and enrolled as a Professional member with the _____ (Name of the Insolvency professional agency). The copy of the certificate is enclosed I hereby submit my application for empanelment as Insolvency Professional with _____. The data/information and other details for considering my application for empanelment of IRP/RP are detailed below;

1.	Name (in full)	
2	Gender	
3	Address correspondence(including Office and Residence)	Office
		Residence
4	Telephone	Office
		Residence
		Mobile
5	Fax No	
6	PAN	
7	Aadhar Number	
8	Passport Number	
9	Date of Birth & Age	
10	Whether belongs to SC/ST/OBC/Minority. If so furnish details	

11	Whether any of the relatives /persons know or otherwise professionally engaged in the If yes, give designation and posting of such Relative/person.		
12	Year of Empanelment of IP		
13	Details of functional Office at Delhi NCR and Other Location		
14	Details of work Experience in CDR/SDR/S4A/ BIFR/AAIFR/Company Law etc		
15	Annual Turnover for last FYs (to be certified by Auditors)		
16	Name of Bank/FI where Applicant is already empaneled		
17	No of Cases handled under IBC, 2016	Completed Assignment Leading to Resolution	Completed Assignment Leading to Liquidation

	Ongoing Assignment	Name of CD	CIRP Start	CIRP End
18				

B. Details of registration with IBBI:

Registration Number with IBBI	Date of Registration	Date valid from	Remarks, if any

C. Details of enrollment with IPA:

Enrolment Number with IPA	Date of Enrolment	Remarks , if any

Professional Qualification

Professional Qualification	Institute/ Professional Body enrolled /registered with	Membership/ Enrolment No	Date of Enrolment	Remarks if any

Work Experience:

Sl No	Duration(From date- to date	Employment/ Practice*	If Employed Name of Employer and Designation	If in Practice as Advocate/CA/CS/CM A, the place of practice	Area of Work

[*Also provide in a separate Annexure the details of Work Experience of handling rehabilitation, restructuring or resolution or winding up of company /any other relevant experience and Experience, if any, on working as IRP/RP in CIRP/Liquidation cases under IBC/Companies Act, 1956/2013 on behalf of banks/ financial institutions/ corporate bodies. Also provide details of completed of Completed Assignments, if any, as an IRP/RP for cases under IBC, 2016 under NCLT]

Education Qualification: (provide details from Bachelor’s degree onwards)

Educational Qualification	Year of Passing	Marks (%)	Class/ Grade	University/College	Remarks, if any

4. Additional Information

SL No	Additional Information	Remarks
1	Whether any disciplinary proceedings pending against the Applicant under the Insolvency and Bankruptcy Code, 2016 (the Code). If so, please furnish the details.	
2	Whether the Applicant removed from the panel of any Bank Financial institution, company, corporation etc. If yes, furnish details & reasons therefor.	
3	Whether the Applicant convicted for any offence? If yes, please furnish the details.	

4	Details of criminal proceedings, if any, pending against the Applicant.	
5	Whether Applicant is declared as wilful defaulter or a non-cooperative borrower? If yes, please furnish the details.	
6	Whether the Applicant has ever been associated with any company as director or a key person which is declared as wilful defaulter or non-cooperative borrower? If yes, please give details	
7	Whether the Applicant closely associated with any company as a director or key position, which is subjected to investigation by SEBI, Serious Fraud Office of Ministry of Corporate Affairs, Enforcement Directorate or such investigation agencies under economic laws of India or other countries? If yes please furnish the details.	
8	Any other relevant information with regard to the Applicant.	

Undertakings:

1. I declare and affirm that no disciplinary proceedings have been initiated or pending against me by any authority (if any disciplinary proceedings are pending against the Applicant details may be given).
2. I undertake to furnish any additional information as and when called for.
3. I am not disqualified from being empaneled as Insolvency Professional.
4. In the event of my empanelment in the -----'s panel of IPs, I agree and undertake as under:
 - (a) I shall at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the IPA with which I have enrolled as a professional member.
 - (b) I shall pay the requisite fee to the IBBI from time to time to keep my registration as IP valid and effective and I confirm that my registration and membership with IBBI/IPA has not been revoked or cancelled or suspended.

- (c) I shall take prior permission from the ----- apart from IBBI for shifting my professional membership from one IPA to another.
- (d) I shall maintain records of all assignments undertaken by me under the Code for at least three years from the completion of such assignment.
- (e) I shall abide by the Code of Conduct specified in the First Schedule to IBBI (Insolvency and Professionals) Regulations, 2016.
- (f) I shall abide by such other conditions as may be imposed by IBBI and the ----- from time to time.
- (g) I shall not use under any circumstances whatsoever, any legend containing the -----'s name or symbol or logo in my letter-heads, sign-boards, name plates etc.
- (h) I shall confirm that I have not been convicted at any point of time by a court of competent jurisdiction and there are no criminal proceedings/ disciplinary proceedings pending against me.
- (i) I shall confirm that I am not a defaulter to any Bank or FI and my name is not there in the list of defaulters with CIBIL or any credit information company.
- (j) If I am found guilty of any misconduct, misfeasance, my name may be summarily removed from the -----'s panel of IPs without any prior intimation and such decision of the ----- shall be final, conclusive and binding on me. I agree and undertake not to raise any objection and challenge the same before any authority, court, etc.
- (k) I declare that presently I am not appearing against the ----- in any of the matter dealt by me. I further declare that on empanelment as IP on the -----'s panel, I shall forthwith withdraw myself from such assignments where I am representing against the ----- / representing claims adverse to the -----.
- (l) I also understand that inclusion of my name in the panel of the ----- does not amount to employment or confer any right for an employment in the Bank.
- (m) I am aware that the ----- is free to engage any IP as per its choice and I have no right to claim that I alone should be entrusted with the assignments of IP.
- (n) I shall abide by the terms and conditions stipulated by the ----- including adhering to the schedule of professional fees.
- (o) I shall promptly notify the -----, if I incur any disqualification for continuing as an IP or cease to be a professional member of IPA/IPE.
- (p) I shall confirm that I have not been employed or closely associated (holding a senior or key position) with a firm/ company, which is subjected to investigation by SEBI, SFIO of Ministry of Corporate Affairs, Enforcement Directorate and such other investigation agencies under the applicable laws of India or any other jurisdiction.
- (q) I shall confirm that I have not been guilty of any professional misconduct or offence involving moral turpitude or otherwise.
- (r) I shall confirm that I have sufficient skill sets, expertise/ experience and knowledge of dealing, handling, supervising, managing different sector of industries / business to effectively discharge duties as IRP, RP or liquidator under the Code.

(s). I shall confirm that I am conversant with the Companies Act, 2013, the Code and the Rules & Regulations framed thereunder and other relevant statutes, rules, regulations, notifications framed by regulators and other competent authorities, in relating to insolvency and liquidation matters.

I declare that the above information furnished by me is true, correct and complete & not concealed any necessary information. If any information furnished by me is found false or misleading at any stage of empanelment, I am liable for the actions that may be initiated by the ----- including removal of my name from the panel without notice.

Place:

Date:

Enclosures:

Self-certified photo copies of the following documents:

- (i) Registration Certificate issued by IBBI;
- (ii) Certificate of enrolment as a professional member of an IPA;
- (iii) Certificates in support of educational qualification;
- (iv) Enrolment certificates with Bar Council of any State of India, Institute of Secretaries of India, Institute of Chartered Accountants of India, Institute of Cost Accountants of India, as the case may be;
- (v) Experience Certificates;
- (vi) Certificate evidencing passing of insolvency examination;
- (vii) Aadhar Card, PAN Card & address proof;
- (viii) Income-tax returns for the past three years;
- (ix) Letter of empanelment issued by any other Banks/ FIs, if any;
- (x) Passport or Declaration that the applicant does not hold passport;
- (xi) Registration certificate issued by IBBI for IPE where applicant is a partner/director, if applicable.

AFFIRMATIONS

1. Self-Attested copies of all the documents as mentioned under Clause above are attached herewith. Further, I undertake to furnish any additional information as and when called for by -----

2. I am not disqualified from being acting as an Insolvency Resolution Professional under the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

3. This application and the information provided by me along with this application are true and complete. If the contents or the enclosure to this application is found to be false and misleading at any stage, ----- shall have the right to initiate appropriate action permissible under law, including reporting the matter to IBBI.

4. I hereby undertake to comply with the requirements to be complied with by the Insolvency Resolution Professional as per the provisions of the Insolvency and Bankruptcy Code, 2016 and the regulations thereof.

5. I shall promptly notify ----- in the event of my disqualification to act as the Insolvency Resolution Professional.

Place:

Date:

Signature of the Applicant

NAME

Submission of Express of Interest (EOI)- Which Bank can call for?

Fellow IPs must first of all understand the Pattern of financing or lending by Banks to its borrowers. For small size exposures the Banks provide entire financing themselves. It means there is only one bank and this is termed as 'Sole Banking'.

For bigger exposures many Bank's come together to form consortium. Concept of consortium comes with a view to diversify the risks or not putting all eggs into one basket. Under consortium one major Bank acts as a leader and is termed as 'Lead bank', and other banks are member of the consortium. Lead Bank takes up or does key functions of financing viz Appraisal of lending proposal, documentation and post lending monitoring & controls. There is a third pattern of financing the borrower which is called "Multiple Financing" and under this channel multiple banks will finance a borrower without any co-ordination amongst themselves.

Which bank can invite EOI?

It's clear that in case of Sole Banking the financing Bank calls the EOI. Whereas in case of multiple financing any bank can invite EOI. Further in case of consortium Financing it is advisable and will be in fitness of things Lead bank should take the initiative to invite EOI, but on ground it's not happening so. We have come across numerous instances where member banks have invited EOI by-passing the Lead Bank and throwing surprise. In one of the cases the lead Bank while is negotiating for rehabilitation of the borrower of the member Bank has moved the NCLT.

Let's us understand what is Expression of Interest (EOI), what are its contents. It generally consists of following two Parts:

(1) Technical Bid - Sample is as under:

Technical Bid for Engagement of Insolvency Professional Against Proposed Corporate Insolvency Proceeding of _____

1	Details of experience in brief, if any, in the activity/industry/sector in which the Corporate Debtor falls. Please be specific about the number of assignments in hand as IP / completion (resolution or liquidation). (Experience pertaining to Group / Partners and assignments other than Insolvency Professional must be clearly detailed as such.)	
2	Understanding of the proposed CIRP assignment: (Please provide a write up on your understanding of the current business dynamics/situation of the Unit proposed for CIRP based on the brief on the corporate debtor provided by the Bank. The write up to include ideas/proposal on what kind of resolution is possible in the situation of the unit, what are the risk factors etc.)	
3	Awareness about applicable local laws specific to Industry/State to which Corporate Debtor belongs.	
4	Resources by way of association with an IPE/ consultancy firm / legal firm / IT expertise firm etc for CIRP (Ability to deploy number of Professionals)	
5	Proximity of office of IP to unit/Regd office/Corporate office of Corporate Debtor	

(2) Financial Bid- Sample is as under

Financial Bid for Engagement of Insolvency Professional Against Proposed Corporate Insolvency Proceeding of _____

	(Rs in lakhs)	One Time Fee Chargeable	Monthly Fee Chargeable
1	Professional Fee for Insolvency Resolution Process for 6 Months		
2	Professional Fee for Two Valuers		
3	Professional fee, if any, payable to IPE/Consultancy firm associated with IRP for infrastructural support		
4	Professional fee for full time engagement of Industry specialist to run the operations of CD		
5	Professional Fee towards engagement of full time Chartered Accountant		
6	Professional Fee towards retainer ship of InsolvencyLawyer/Advocate in the CIRP for other than appearing in cases contested by any otherstakeholders		

7	Remuneration to MIS/Data/IT specialist for recovering, updating, analysing computer data related to operations, accounts, Salary of employees etc.		
8	Remuneration on other Managers/staff to be engaged for Cash flow management and monitoring		
9	Remuneration of any other Key management personnel		
10	Remuneration for other support staff and logistics		
11	Insurance charges, if any		
12	Rough Estimate of out of pocket expenses and taxes (Actual expensed should not exceed by more than 50% of estimates)		
13	Any other costs/charges		
	TOTAL		

Arriving at fee to be quoted in Financial Bid

Banks have varied practices in this regard. Some Banks are asking only for per month professional fees of IRP & RP period. Or what will be fees of IRP if the Committee of Creditors decides to go for liquidation in it's very first meeting.

We have also come across formats of Financial Bids asking to quote professional fee of IRP, publication charges, all other expenses up to holding of first COC.

Every Bank has its own set of notion for inviting Financial Bid, some ask for exclusive fees of IRP/RP/Liquidation while others mix IRP/RP fees with fees of professional (Chart given in point C- Type of professional help required) that may be deployed during CIRP.

Factor to be kept in view while writing Financial Bids

Following table will guide you how inputs are important

A. Look at Company Master data at Ministry of Corporate Affairs website.

Location of Registered office of CD	which NCLT has jurisdiction?
Authorized & paid up capital	will give a sense how much capital has been pumped in by promoters.
Date of Incorporation	How old are affairs of the Company?
Last Balance Sheet Filed & last AGM Held.	How much work related to completion of account is pending?
Names of Directors	Person in control
Company listed or Unlisted	If listed the volume of work will be more during CIRP due to work associated with listed company compliances
Charges created an assets of CD	Will show depth of in-debtness
Whether Company is Public or Pvt. Ltd. Co.	

B. Looking at the website of the CD or making search about company affairs on google, if the CD does not maintain a website.

Observation about company	How is it helpful
If company is listed- Last Audited Balance Sheet & Annual Report is available Company website	<ul style="list-style-type: none"> • Know about promoter group • Key activities & products of the company • How many locations does the Company have as units and factories • Assets size and schedule of assets • Liabilities- short term and long term; Secured & Unsecured • How many bankers/FCs from which finance has been taken <p>All the above points help us in assessing the quality & quantity of work to be handled by IRP/RP.</p>

C. Type of Professional Help required

The Responsibility of managing a Corporate Debtor as a going concern is humongous. Resolution professional requires support & consultancy of multiple domain experts or qualified & experienced professionals Examples of some services are given below:

- Advocate required to file petition with the respective NCLT- some banks are now giving job of filling petition to IRP as a combo package for legal & Insolvency services. Other Banks are continuing the practice of using services of their own empanelled advocates for filling the petition.
 - Advertisement agency for publication of “Public Announcement”.
 - Professional needed to comply pending statutory & regulatory compliances.
 - Hotel / Meeting rooms for conducting Committee of Creditor’s meeting.
 - Registered valuers for arriving at Fair value & Liquidation value of Assets of the Corporate Debtor.
 - Professional for completion & Audit books of account of CD.
- Professional/ advisors-needed for control of assets, management of operations of CD & to take necessary steps to keep it as a going concern.
 - Professional to examine & verify preferential, fraudulent, undervalued, extortionate transaction.
 - Professional to handle Mis/ Data/ IT Specialist for recovering, updating, analyzing, computer data related to operations, account, salaries of employees.

D. Knowledge of the sector/industry

Economies are always cyclic. At any given point of time, a type of industry or sector may be on upswing, and at the same time another industry or sector maybe on downswing. Thus, chances of striking a resolution plan may be higher when the unit proposed to be assigned to you is in a sector/industry which is on the upswing. An in-depth analysis of the industry of borrower and knowing about the future outlook would be key input while deciding on quoting amount in the financial bid.

Final opinion on amount of financial bid to be quoted by the IRP/IP on above parameters:
A – Company’s master data – at MCA
B – Information/ data picked up from the website of the CD
C – Type of Professional Help required
D – Knowledge of sector/Industry

Pre-visits to the Unit/Account being assigned to IRP/RP
--

This is a stage when the case has been assigned to you, application has been filed with NCLT, pleadings are complete and IRP/RP senses that by next date of hearing order for admission of company for CIRP is sure to come.

Immediately after the said order IRP is required to take custody & control of assets of the Company for managing its ongoing concern.

If it's possible & convenient and doesn't require much energy and time of IRP, it is

advisable to visit the registered office & units of the corporate debtor. It looks challenging in case of smaller units to seek the company information. However, for bigger corporates it is possible to visit them and do discreet enquiries about important aspects to be taken control of after initiation of CIRP. Such a visit enables IRP to form view on future course of action which reduces post CIRP initiation uncertainties, and control of CD can be taken effectively.

FRAMEWORK FOR PROCURING PROFESSIONAL SUPPORT



V. SIVASUBRAMANIAN ADVOCATE AND
INSOLVENCY PROFESSIONAL EXECUTIVE
PARTNER WITH LAKSHMIKUMARAN & SRIDHARAN.

In order to duly discharge his duties and responsibilities Interim Resolution Professional requires support from various professionals. This article deals with various dimensions of the framework for procuring professional support.

A. Requirement for professional support by IRP

1. From the date of appointment of the interim resolution professional (IRP), the management of the affairs of the corporate debtor shall vest in the IRP. The powers of the Board of directors or the partners of the corporate debtor (CD) shall stand suspended and be exercised by the IRP.
2. IRP is required to collect all information relating to the assets, finances and operations of the CD for determining the latter's financial position, as well as to receive and collate all the claims submitted by creditors to him pursuant to the public announcement.
3. After collation of the claims received and determination of the financial position of the CD, the IRP shall constitute the committee of

creditors (COC) and conduct its first meeting within seven days of such constitution.

4. The responsibilities of an IP under the Code require the highest level of professional excellence, dexterity and integrity. So it is imperative that the IRP ensures availability of a competent team of professionals to discharge his responsibilities under the Code and Regulations made thereunder. In particular, the IRP may require support of the following professionals (as appropriate), namely:-
 - (a) Registered valuers (IRP is mandated to appoint two valuers to determine the liquidation value. If necessary a third valuer may be appointed by the IRP/RP)
 - (b) Domain experts and/or managers (to enable running of the business as a going concern)
 - (c) Information Technology (IT) professionals (to set up and maintain a data room for claims and financial information).
 - (d) Company Secretary (to assist in conduct of the first COC meeting and to prepare records of the proceedings thereof)
 - (e) Accountants (to collate and assist in verification of the claims and to maintain accounts)
 - (f) Lawyers (to represent the IP, COC and CD, as necessary, before the AA, NCLAT and judicial bodies).

B. Requirement for professional support by RP

5. COC in its first meeting shall appoint the resolution professional

(RP) by a majority of not less than 66% after obtaining the IP's consent. RP shall conduct the entire corporate insolvency resolution process (CIRP) and manage the operations of the CD during the CIRP period. The RP shall exercise the powers and perform duties as are vested or conferred on the IRP during this period.

6. It shall be the duty of the RP to preserve and protect the assets of the CD including the continued business operations of the CD. For these purposes, the RP shall undertake any or all of the following action, namely:-
 - (a) take immediate custody and control of all the assets of the CD including business records of the CD
 - (b) Represent and act on behalf of CD with third parties, exercise rights for the benefit of CD in judicial, quasi-judicial and arbitration proceedings
 - (c) Raise interim finance subject to COC approval
 - (d) Appoint accountants, legal or other professionals in the manner specified by the Board
 - (e) Maintain an updated list of claims
 - (f) Convene and attend all meetings of the COC
 - (g) Prepare an information memorandum
 - (h) Invite prospective resolution applicants (RAs) who fulfil eligibility criteria laid down by the RP with COC approval.
 - (i) Present all resolution plans at the COC meeting.
 - (j) File application for avoidance of preferential, related party, undervalued and extortionate transactions.

7. To enable smooth conduct of these items of work IRP may require professional support from other professionals. For example, he may require support of the following professionals (as appropriate), namely:-
- (a) Registered valuers (to estimate the liquidation value)
 - (b) Domain experts and/or managers (to enable running of the business as a going concern and to enable inviting/evaluating the resolution plans)
 - (c) Information Technology (IT) professionals (to set up and maintain a data room)
 - (d) Company Secretary (to assist in conduct of COC meetings and to prepare records of the proceedings thereof)
 - (e) Accountants (to collate the claims, maintain accounts during the CIRP period and to assist in preparation of the information memorandum)
 - (f) Finance experts (to raise interim finances and to assist in evaluating the resolution plans)
 - (g) Forensic auditors (to assist in examination of transactions to determine whether they are preferential, related party, undervalued and extortionate transactions)
 - (h) Lawyers (to represent the IP, COC and CD, as necessary, before the Tribunal and judicial bodies).

C. Scope of work, deliverables and professional fee for other professionals

- 8. IP is obliged to take reasonable care and diligence while performing his duties, including incurring expenses. He must, therefore, ensure that not only fee payable to him is reasonable, but also other expenses incurred by him are reasonable.
- 9. The above list of professionals is non-exhaustive and may be taken as indicative or illustrative. However, it may be noted that the other professionals appointed by an IP shall raise bills / invoices in his / its (such as registered valuer) name towards such fees, and such fees shall be paid to his / its bank account. So before the professionals are appointed, it would be essential that the IP specifies the scope of work, deliverables and timelines for the professional and obtains a fee quote from the professional.
- 10. The fee quoted by the professionals shall be submitted to the COC for approval as part of the insolvency resolution process costs ['CIRP costs']. COC shall fix the 'expenses' which CIRP costs, to be incurred on or by the resolution professional (RP). It may be noted that these expenses include the cost of engaging professional advisors, to be incurred by the IP.



PRACTICUS QUESTE

Can an undertaking of a Corporate Debtor under a put option, non-disposal and a shortfall undertaking be considered a contract of guarantee and therefore a 'financial debt' under the IBC?

The National Company Law Tribunal, New Delhi in the case of *Union Bank of India v. Era Infra Engineering Limited*, a put option, a non-disposal arrangement and a shortfall undertaking to be a contract of guarantee. Consequently, a default thereunder was held to be a financial debt under the Insolvency and Bankruptcy Code, 2016.

After a settlement between parties, can an application under section 7 of IBC be admitted?

In case of *Gaurav Pandey v. Eternity Investment Services Private Limited* after the application for initiation of corporate resolution process was filed under Section 7 of IBC, the parties entered into a settlement and the NCLAT bench held the company could not have been said to be in default after settlement, therefore, there was no justification in admitting the application and the NCLAT has declared illegal the admission of application under Section 7 of the IBC after settlement between the parties.

Can a Resolution Professional share the copy of minutes of Committee of Creditors to the Operational Creditor?

It is clearly stated in the Regulation 24 of IBBI (IRP for Corporate Persons) Regulations, 2016 that a Resolution Professional shall circulate the minutes of the meeting of the Committee of Creditors to all participants of the meeting, therefore if Operational Creditors are part of the meeting, then the copy of minutes of that meeting will be sent to them by the Resolution Professional.

Whether a promoter shareholder eligible to bid for resolution plan of the company?

Insolvency and bankruptcy code doesn't bar the promoter shareholder to be a resolution applicant. The eligibility criteria for a person to be a resolution applicant is laid down in section 29A of the Code. If the promoter shareholder is eligible under section 29A of the Code then he can bid for resolution plan of the company.

What are the tax risks which might apply to a restructuring or insolvency procedure?

Firstly, there is no exemption from applicability of any tax liabilities either directly or indirectly during any of the procedures. However, upon the consent of the respective tax authority, relief may be granted by the Adjudicating Authority from the applicability of tax on waivers of principal/interest, etc., and if the restructuring envisages any merger/de-merger as a revival mechanism, the tax implications thereof shall be in accordance with the applicable tax laws in force at the material time when the resolution plan is approved by the Adjudicating Authority. Secondly, the company is legally duty bound to pay all applicable statutory dues viz. Excise Duty, Customs Duty, GST, Income Tax, Capital Gain Tax, other duties and levies, etc., arising even during the pendency of any of the procedures. The entire restructuring procedure and the resolution plan must be in compliance with all applicable laws in force at the time of sanction of the plan.

Is the Adjudicating Authority approval required when Interim Resolution Professional continues as Resolution Professional after being approved in the First meeting of the Committee of Creditors?

According to the Section 22(3)(a) when an Interim Resolution Professional is approved to be continued as a Resolution Professional in the first meeting of the Committee of Creditors, the decision has to be communicated to the Interim Resolution Professional, Corporate Debtor and the Adjudicating Authority. Therefore, no approval is required of the Adjudicating Authority for such appointment.

Is there any obligation for a Resolution Professional to call Committee of creditors meeting at a regular interval?

According to Regulation 18 of IBBI (IRP for Corporate Persons) Regulations, 2016 if Resolution Professional does not call for committee of creditors meetings, the creditors holding not less than 33% of the voting share can request the Resolution Professional to call meeting of Committee of creditors which is to be mandatorily called by the Resolution Professional. Therefore, Resolution Professional is expected to call Committee of creditors meeting at a regular interval.

Can an application under section 7 of the Insolvency and Bankruptcy Code, 2016 be rejected on the ground of “usurious and extortionate penal interest”, which is governed by Usurious Loans Act, 1918?

In the matter of Sh. Naveen Luthra v. Bell Finvest (India) Ltd. & Anr. the National Company Law Appellate Tribunal (NCLAT) has held that if the application is complete and the Adjudicating Authority is satisfied that there is a debt due to the ‘Financial Creditor’ and there is a default on the part of the ‘Corporate Debtor’, it has no other option but to admit the application in absence of any other infirmity and cannot be rejected on the ground of “usurious and extortionate penal interest”, which is governed by Usurious Loans Act, 1918.

According to the Insolvency and Bankruptcy Code, 2016, how many assignments Interim Resolution Professional/ Insolvency Professional is permitted to undertake at one point of time?

In case of IDBI Bank Limited Vs. Lanco Infratech Limited the Bench observed that the proposed Interim Resolution Professional could not find sufficient time to act as Interim Resolution Professional for the respondent company due to his previous three assignments of large companies. Therefore, according to the Code, an Insolvency Professional must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments.

If a winding up petition is pending against the company can an Adjudicating Authority trigger insolvency resolution process on an application filed under sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016?

There is no bar on the Adjudicating Authority to trigger an insolvency resolution process on an application filed under sections 7, 9 and 10 if a winding up petition is pending unless an official liquidator has been appointed and a winding up order is passed as stated in the case of Union Bank of India v. Era Infra Engineering Limited.



JUDICIAL DECLARATION



Relevant Judicial Pronouncements in the Month of October, 2018- Resolution and Liquidation

Bench: NATIONAL COMPANY LAW TRIBUNAL DIVISION BENCH, CHENNAI

Corporate Debtor: M/s OCEANIC TROPICAL FRUITS PRIVATE LIMITED

Financial Creditor: ICICI BANK LIMITED

Amount of Debt: Rs.100.94 CRORES APPROX.

Date of Order: 31-10-2018

Relevant Section: Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Financial Creditor

- Application was filed by the Financial Creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor.
- Mr. C. Ramasubramaniam was appointed as the Interim Resolution Professional as proposed by the Financial Creditor. Later, Mr. V. Nagarajan was appointed as the Resolution Professional in the first meeting of the Committee of Creditors.
- Resolution Professional issued Expression of Interest and invited prospective Resolution Applicants to put forward their Resolution Plan in respect of the Corporate Debtor. In response to that three Resolution Applicants expressed their interest to submit Resolution Plan for the Corporate Debtor, out of which only two Resolution Applicants submitted their proposed Resolution Plan.
- Resolution Professional called meeting of the committee of creditors for the discussion of the proposed Resolution Plans, however, members of Committee of creditors chose not to discuss the said Resolution Plans and meanwhile, time period of CIRP also expired.
- Therefore, in terms of the provisions of Section 33/34 of the Insolvency and Bankruptcy Code, the Corporate Debtor was required to be liquidated due to the efflux of time.
- As no Resolution Plan was received the Adjudicating Authority passed the order for liquidation of the Corporate Debtor viz. M/s Oceanic Tropical Fruits Private Limited.

Bench: NATIONAL COMPANY LAW TRIBUNAL KOLKATA BENCH, KOLKATA

Corporate Debtor: MANOR FLOATED LIMITED

Financial Creditor: IDBI BANK LIMITED

Amount of Debt: Rs.32.22 CRORES APPROX.

Date of Order: 30-10-2018


Relevant Section: Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Financial Creditor

- Application was filed by the Financial Creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor.
- Mr. Sanjay Gupta was appointed as the Interim Resolution Professional. Later, Mr. Anil Agarwal was appointed as the Resolution Professional in the First meeting of the Committee of Creditors.
- Resolution Professional published advertisement calling upon the prospective Resolution Applicant(s) the Expression of Interest and resolution plans for the Corporate Debtor.
- From the record it appeared that the Resolution Professional received the Expression of Interest from three applicants and out of them only two deposited the earnest money.
- Open bidding process was adopted and the highest bidder was declared H1 bidder and was directed to submit resolution plan. However, the resolution plan was not approved by the committee of creditors and resolution professional was then instructed to start process of calling expression of interest afresh.
- Meanwhile, CIRP period of 180 days got over and Adjudicating Authority extended the period after receiving the application from resolution professional under the instruction of Committee of Creditors.
- Resolution professional then received two resolution plans out of which resolution plan of M/s Brighter Side Renewable Energy Ventures Private Limited was approved in the 8th meeting of the committee of creditors.
- Resolution professional was instructed to submit that resolution plan for approval of the Adjudicating Authority.
- Section 31 of IBC requires Adjudicating Authority to get satisfied that the plan submitted for approval meets requirements as referred to in sub-section (2) of Section 30 and also to see whether there is provision made in the plan for its effective implementation.
- The resolution professional certified that the plan met all legal requirements and therefore, the order was passed for approving the resolution plan of M/s Brighter Side Renewable Energy Ventures Private Limited with 100% voting share of Committee of creditors under the provisions of sub- section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016.

Bench: NATIONAL COMPANY LAW TRIBUNAL KOLKATA BENCH, KOLKATA
Corporate Debtor: HAHNEMANN HOUSING AND DEVELOPMENT PRIVATE LIMITED
Financial Creditor: SHRI SUPRIYO RANA
Amount of Debt: Rs.12.09 LAKHS APPROX.
Date of Order: 29-10-2018

Relevant Section: Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Financial Creditor

- Application was filed by the Financial Creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor.
- Mr. Manmohan Jhawar was appointed as an Interim Resolution Professional and upon his appointment CIRP was initiated. He was then regularised as resolution professional.

- 
- Issue was that how the applicant would be covered by the expression “Financial Creditor” and the expression “Financial Debt” within the meaning of the term used in Section 7 and Section 5(7) & 8 of the IBC. Therefore, the case of Nikhil Mehta & Sons & ors vs. M/s AMR Infrastructure Limited was referred where NCLAT reversed the decision of the NCLT, ruled in favour of the Flat Buyer and held it to be Financial Creditor. NCLAT further went on to rule that the “debt” in this case was disbursed against the consideration for the time value of money which is the primary ingredient that is required to be satisfied in order for an arrangement to qualify as “Financial Debt” and for the lender to qualify as a “ Financial Creditors”, under the scheme of IBC.
 - Therefore, the Corporate Debtor did not appear to defend his case and the application filed was complete and there was no occurrence of default, therefore the application filed under section 7 of IBC was considered fit for admission.
 - Claims were submitted by 16 Home buyers/Financial Creditors and two Operational Creditors.
 - Resolution professional was not successful in getting Expression of Interest from any Resolution Applicant for want of publication of Form G.
 - Further it was submitted that despite repeated directions issued through the Adjudicating Authority to the Corporate Debtor, the Corporate Debtor failed to submit information, documents and account details.
 - Resolution professional contended that though he appointed two Valuers so as to value the assets of the Corporate Debtor they also could not complete the valuation for want of inventory details and non-receipt of fixed assets details from the corporate Debtor. He also contended that there is no cash generation from the business operation of the Company and what has been generated was negligible and due to lack of information and non-production of documents etc. the inventory of the assets of the Company was not possible.
 - Upon the said reasons, the Resolution professional could not publish Form G inviting Resolution Plans. In view of non-issuance of publication calling for Expression of interest from the Resolution Applicant and because of the deliberate non-cooperation from the side of the Directors of the suspended Board of the Corporate Debtor, the Committee of Creditors has unanimously taken a decision to recommend for liquidation of the Corporate Debtor, company. The proposal for liquidation had been unanimously passed by the Committee of Creditors. At the advice of the Committee of Creditors, the Resolution professional filed the final report along with the copy of resolution passed by the committee of creditors in its 5th meeting.
 - CIRP period also got expired.
 - It was found that the Resolution professional had not taken much care to comply with the statutory duties cast upon him in performing his duty as an RP. He also did not express his written consent to continue as a liquidator. It was then ordered to appoint Mr.Ananda Rao Korada as the liquidator and order was passed to liquidate Hahnemann Housing and Development Private Limited.

Bench: NATIONAL COMPANY LAW TRIBUNAL HYDERABAD BENCH, HYDERABAD
Corporate Debtor: M/s KAMINENI STEELS AND POWER INDIA PRIVATE LIMITED
Financial Creditor: INDIAN BANK, ALLAHABAD BANK, ETC



Amount of Debt: Rs.1405.01 CRORES APPROX.

Date of Order: 26-10-2018

Relevant Section: Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Corporate Applicant

- Application was filed by the Corporate Debtor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor itself and declare moratorium.
- Mr.Chodavarapu Bala Mouli was appointed as the Interim Resolution Professional and later as a resolution professional.
- The Resolution Plan / One Time Settlement (OTS) proposal was submitted by Corporate Applicant which was said to have been approved by the Committee of Creditor and the tribunal via order dated 27 Oct 2017.
- However, financial Creditors, Corporate applicant and United Seamless Tubulaar Private Limited were aggrieved by the order of this Tribunal and filed appeal before Hon'ble NCLAT.
- Hon'ble NCLAT disposed three appeals and allowed appeal filed by the financial creditor and remitted the case to the Adjudicating Authority with a direction to initiate liquidation proceedings in terms of Section 33 read with Section 34 of IBC. Hon'ble NCLAT held that approval of the Resolution Plan by Financial Creditors having less than 75% of the voting share is in contravention of provisions of law i.e Section 30 (2) (e) of the Code. So the order passed by this Tribunal in approving Resolution Plan was set aside and consequently directed this Tribunal to initiate Liquidation proceedings in terms of Section 33 r/w Section 34 of IBC.
- Also, the Resolution Professional appointed during CIRP could not be appointed as Liquidator by virtue of provisions of 34 (4) (a) of IBC which states that the Adjudicating Authority shall by order replace the resolution professional, if the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30.
- Therefore Shri R. Ramakrishna Gupta was appointed as the liquidator and order was passed to Liquidate M/s Kamineni Steels And Power India Private Limited

Bench: NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, MUMBAI

Corporate Debtor: PARTE CASTERS PRIVATE LIMITED

Financial Creditor: STATE BANK OF INDIA

Amount of Debt: Rs.56.32 CRORES APPROX.

Date of Order: 22-10-2018

Relevant Section: Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Corporate Applicant

- Application was filed by the Corporate Debtor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor itself.
- Mr. Jitendra Palande was appointed as the Interim Resolution Professional. He was later appointed as a resolution professional.

- Two registered valuers were appointed according to regulation 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and according to regulation 36(1) Information Memorandum was prepared and submitted to the Committee of Creditors.
- Expression of Interest was also invited as per regulation 36A.
- Committee of creditors resolved to seek for extension of CIRP by 90 days and filed application before the Adjudicating Authority under regulation 12(2).
- The Information Memorandum was issued by the Resolution Professional to prospective applicants under section 36B and in the 10th Committee of Creditors meeting, Mr Prithviraj Patil and Mr Amol Jagdale submitted a resolution plan for Rs.4.79 Crores which met the criteria laid down in Section 30(2) of the IBC along with the regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- Application was filed to seek approval of resolution plan by the Adjudicating Authority.
- The Bench noticed that this resolution plan has provided for payment of insolvency resolution process costs in the manner specified by the Board in priority to the repayment of the other debts of the Corporate Debtor, provided for the repayment of debts of the operational creditors as per the waterfall mechanism mentioned under Section 53 of the Code, provided for the management of the affairs of the Corporate Debtor after the approval of the Resolution Plan, provided plan for payment to the creditors as mentioned in the resolution plan and this plan is not in contravention to any of the provisions of law for the time being in force with an undertaking that this plan will remain in conformity with the other requirements as specified by the Board.
- The bench then approved the Resolution Plan without any modification, which was already been approved by Committee of Creditors in its meeting with 100 % vote share.

Bench: NATIONAL COMPANY LAW TRIBUNAL PRINCIPAL BENCH, NEW DELHI

Corporate Debtor: M/s RAVE SCANS PRIVATE LIMITED

Financial Creditor: INDIAN OVERSEAS BANK AND OTHERS

Amount of Debt: Rs.13.65 CRORES APPROX.

Date of Order: 31-10-2018

Relevant Section: Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Corporate Applicant

- Application was filed by the Corporate Debtor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor itself.
- Mrs. Ritu Rastogi was appointed as an Interim Resolution Professional.
- CIRP period of 180 days got expired and period was extended by 90 days.
- In the Committee of Creditors meeting resolution professional apprised the Member of the Committee that four resolution plans were received and in the e-voting all plans were rejected.
- One of the resolution applicant made a prayer to set aside the decision taken by the committee of creditors in the meeting whereby the resolution plan of the applicant was rejected. A direction was sought for committee of creditors to reconsider the resolution plan of the resolution applicant afresh and submit a report to the Tribunal.

- The matter was again taken up in the committee of creditors meeting and again got rejected.
- Then resolution applicant offered to file a revised resolution plan and accordingly time was granted with the condition of 10% of the offered amount to be deposited by way of demand draft with the application itself. Liberty was also given to any other resolution applicant to file a resolution plan.
- The resolution plan of the applicant was again rejected for the third time. Then resolution applicant submitted a revised resolution plan in the meeting held of committee of creditors where it finally got approved by 78.55 per cent voting share.
- Resolution professional then filed application under section 30(6) read with 31 of the code, 2016 for approval of the resolution plan. However one of the financial creditors raised an objection for the approved resolution plan which was later resolved by the comprehensive certificate showing compliance with various provisions of the Code and regulations filed by the resolution professional.
- Also, application filed by the resolution professional and the resolution plan applicants respectively for exclusion of the period consumed in litigation was allowed and objection raised by one of the applicant was also rejected.

Bench: NATIONAL COMPANY LAW TRIBUNAL NEW DELHI BENCH, NEW DELHI

Corporate Debtor: M/s FENACE AUTO LIMITED

Operational Creditor: VESUVIUS INDIA LIMITED

Amount of Debt: Rs.10.47 LAKHS APPROX.

Date of Order: 22-10-2018

Relevant Section: Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016-
Initiation of Corporate Insolvency resolution process by Operational Creditor

- Application was filed by the Operational creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor.
- Mr. Punkaj Jain was appointed as an Interim resolution professional and later was appointed as a resolution professional.
- Public announcement was made for inviting the claims and resolution professional accepted the claims received.
- Two registered valuers were appointed by the resolution professional for valuation of the assets of the corporate debtor.
- Public announcement was made for inviting the expression of interest.
- The committee of creditors in its meetings extended the time for submission of Resolution Plans so as to maximize the wealth of stakeholders and since the 180 days of the CIR period were to expire the resolution professional, on a resolution passed by the committee of creditors, filed an application under Section 12(2) of the Insolvency Bankruptcy Code seeking extension of a further period of 90 days to complete the CIR process.
- Of the resolution plans received, applications submitted by M/s Liberty House Group and M/s.
- Badve Engineering Ltd. found favour with the committee of creditors.

- M/s. Intellect Law Partners was appointed to evaluate the legal viability of the Resolution Plans received.
- The committee of creditors met with both the resolution applicants and negotiated for a higher bid. The applicants accordingly submitted their new bids and the proposal given by M/s Badve Engineering limited was accepted by the committee of creditors.
- Due diligence of the resolution Applicant was carried out. The applicant also furnished an affidavit stating that they are not ineligible under Section 29A of the Insolvency Bankruptcy Code to submit a Resolution Plan in respect of business of the Corporate Debtor M/s Renace Auto lard.
- In the 12th meeting of the committee of creditors, resolution was passed to seek approval of the Plan through e voting which was duly approved by 100% of the Committee of the Creditors. It was submitted that the Resolution Plan of the resolution applicant was not only feasible and viable, but also comparatively far more beneficial compared to plans scrutinized earlier.
- Therefore the tribunal accepted the decision of the committee of creditors and granted the approval to the resolution plan of M/s Badve Engineering Limited.

Bench: NATIONAL COMPANY LAW TRIBUNAL SINGLE BENCH, CHENNAI


Corporate Debtor: M/s SUN PAPER MILL LIMITED

Financial Creditor: M/S AGARWAL COAL CORPORATION PRIVATE LIMITED

Date of Order: 16-10-2018

Relevant Section: Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016-
Initiation of Corporate Insolvency resolution process by Operational Creditor

- Application was filed by the Operational creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor
- Before filing the application for initiation of CIR process various issues were raised which were later resolved.
- Mrs. J. Karthiga was appointed as an Interim resolution professional who was later appointed as a resolution professional.
- The interim resolution professional issued the public announcement for inviting claims from various creditors with respect to the Corporate Insolvency Resolution Process of the
- Respondent/Corporate Debtor. Pursuant to the public announcement, 10 operational creditors and one financial creditor submitted their claims.
- Due to non-availability of the financials of the Corporate Debtor and determination of financial position of the Corporate Debtor, the verification of claims got delayed. In this regard an application under section 19(2) of the Code seeking cooperation from the Corporate Debtor was filed by the interim resolution professional.
- This tribunal directed the Corporate Debtor to extend assistance and cooperation to the interim resolution professional and also granted extension of the CIR process by another 90 days.
- The committee of creditors after taking into consideration the fact that there was no default on the part of the Corporate Debtor in repayment of the facilities extended to it



and that the account of the Corporate Debtor had been a standard account as per the prudential norms and directives issued by the Reserve Bank of India and that the same is not classified as a Non Performing Asset, set a criteria that only a representative/nominee of at least 51% or more of the existing shareholder can be eligible to make an application for submission of Resolution Plan. Thereupon, the committee of creditors, taking into consideration the approval of waiver of expression of interest in Ms. Mechno Engineering Works Vs Propel Valves Private Limited by the NCLT Chennai, approved the waiver of publishing expression of interest (EOI).

- A Resolution Plan was submitted by the representative/nominee of 51% shareholders of the
- Corporate Debtor and the same was approved by the committee of creditors. An application was filed by the resolution professional before this Tribunal for approval of the Resolution Plan however an operational Creditor filed an appeal against the plan. The tribunal rejected the resolution plan and directed the resolution professional to now publish EOI.
- Then eligible Resolution Applicant submitted the Resolution Plan which was duly verified by this Applicant that the Resolution Applicant was not disqualified under the provisions of Section 29A of the Code.
- It was approved in a meeting of the Committee of Creditor with 100 per cent voting share.
- The resolution plan was then approved by tribunal and resolution process was concluded.

Bench: NATIONAL COMPANY LAW TRIBUNAL SINGLE BENCH, CHENNAI


Corporate Debtor: M/s SURANA INDUSTRIES LIMITED

Financial Creditor: M/S IDBI CAPITAL MARKETS & SECURITIES LIMITED

Date of Order: 12-10-2018

Relevant Section: Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016-
Initiation of Corporate Insolvency resolution process by Operational Creditor

- Application was filed by the Operational creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor
- Mr. Rama Krishnan Sadasivan was appointed as an interim resolution professional who was later appointed as a Resolution Professional.
- Advertisement was issued for inviting the resolution plan(s) in respect of corporate debtor and in response to that six resolution applicants expressed their interest to submit the resolution plan for the corporate debtor.
- In obedience to regulation 35 of the CIRP regulations, resolution professional appointed two registered valuers to ascertain the liquidation value of the corporate debtor.
- Extension period of 90 days was also sought beyond the 180 days of CIR process.
- Three resolution plan were received out of which two resolution plans were rejected by 100 per cent voting share in the meeting of committee of creditors and only one plan was found compliant with requirements of the code. However it was also rejected and



afresh resolution plans were called. Then also two resolution plan were received which were both rejected in the meeting of committee of creditors.

- Since there were no resolution plan approved at the expiry of 270 days order was passed to liquidate M/s Surana Industries Limited.

Bench: NATIONAL COMPANY LAW TRIBUNAL BENGALURU BENCH, CHENNAI

Corporate Debtor: UNIVERSAL POWER TRANSFORMERS PRIVATE LIMITED

Financial Creditor: NLMK INDIASERVICE CENTRE PRIVATE LIMITED

Amount of Debt: Rs. 3.85 LAKHS APPROX

Date of Order: 11-10-2018

Relevant Section: Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Operational Creditor

- Application was filed by the Operational creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor.
- Mr. Ravi Sankar Devarakonda was appointed as an Interim resolution professional later he was ratified as a Resolution professional in the First meeting of the committee of creditors.
- Public announcement was made for inviting the claims and resolution plan of Mr. Dhruv Talwalkar was approved by the committee
- Resolution Professional appointed two valuers to ascertain the liquidation value of the corporate debtor.
- Expression of Interest were also invited for submission of Resolution Plans by the prospective resolution applicant.
- Resolution Plan of Mr. Dhruv Talwalkar was approved by the committee of creditors which was in compliance with the requirements of the code.
- Tribunal then accepted the resolution plan approved by the committee of creditors.



POLICY ACTUALIZAR

institute”, the words “it is a professional institute” shall be substituted.

8. In the said rules, for Annexure IV, the following Annexure shall be substituted, namely :-

Eligibility Qualification and Experience for Registration as Valuer (See Explanation II to rule 4)

Asset Class	Eligibility	Experience in specified discipline
	Qualification	
Plant and Machinery	(i) Graduate in Mechanical, Electrical, Electronic and Communication, Electronic and Instrumentation, Production, Chemical, Textiles, Leather, Metallurgy, or Aeronautical Engineering, or Graduate in Valuation of Plant and Machinery or equivalent;	(i) Five years
	(ii) Post Graduate on above courses.	(ii) Three years
Land and Building	(i) Graduate in Civil Engineering, Architecture, or Town Planning or equivalent;	(i) Five years
	(ii) Post Graduate on above courses and also in valuation of land and building or Real Estate Valuation (a two-year full time post-graduation course).	(ii) Three years
Securities or Financial Assets	(i) Member of Institute of Chartered Accountants of India, Member of Institute of Company Secretaries of India, Member of the Institute of Cost Accountants of India, Master of Business Administration or Post Graduate Diploma in Business Management (specialisation in finance). (ii) Post Graduate in Finance	Three years
Any other asset class along with corresponding qualifications and experience in accordance with rule 4 as may be specified by the Central Government.		

Note.- The eligibility qualification means qualification obtained from a recognised Indian University or equivalent Institute whether in India or abroad.”.

Note : The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1316(E), dated the 18th October, 2017 and subsequently amended, number G.S.R. 155(E), dated the 9th February, 2018, number G.S.R. 559(E), dated the 13th June, 2018, and number G.S.R. number 925(E), dated the 25th September, 2018.

Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) (Second) Guidelines, 2018

Provisions in the Insolvency and Bankruptcy Code, 2016

Section 16(3)(a) of the Insolvency and Bankruptcy Code, 2016 (Code) requires the Adjudicating Authority (AA) to make a reference to the Insolvency and Bankruptcy Board of India (Board) for recommendation of an insolvency professional (IP) who may act as an interim resolution professional (IRP) in case an operational creditor has made an application for corporate insolvency resolution process (CIRP) and has not proposed an IRP. The Board, within ten days of the receipt of the reference from the AA, is required under section 16(4) of the Code to recommend the name of an IP to AA against whom no disciplinary proceedings are pending.

2. Section 34(4) of the Code requires the AA to replace the resolution professional, if (a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; (b) the Board recommends the replacement of a resolution professional to the AA for reasons to be recorded in writing; or (c) the resolution professional fails to submit written consent under section 34(1). For the purposes of clause (a) and clause (c) of section 34(4), the AA may direct the Board under section 34(5) of the Code to propose the name of another IP to be appointed as a liquidator. The Board is required under section 34(6) to propose the name of another IP along

with written consent from him within ten days of the direction issued by the AA under section 34(5).

Guidelines

3. When a reference or direction is received under section 16 or 34 of the Code from the AA for recommending / proposing the name of an IP, the Board has no information about the volume, nature and complexity of the CIRP or Liquidation Process and the resources available at the disposal of an IP. In such a situation, the Board is unlikely to add much value by recommending an IP for a CIRP / Liquidation. In fact, the bill titled "The Insolvency and Bankruptcy Code, 2015", as introduced in Lok Sabha, provided that the Board shall recommend the name of an IP who has the relevant expertise for various processes under the Code. These provisions were dropped based on the recommendations of the Joint Parliamentary Committee, which observed that there are sufficient safeguards to ensure that the competent persons are enrolled as insolvency professionals.

4. Further, it takes some time for a reference or a direction from the AA to reach the Board. The Board may take up to ten days to identify an IP for the purpose. It takes also some time for the recommendation of the Board to reach the AA, after which the AA could appoint the recommended IP. The process of appointment of an IRP or Liquidator may entail 2-3 weeks, which could be saved if the AA has a ready panel of IPs recommended by the Board and it can pick up any name from the Panel while issuing the Order.

5. Given that every IP is equally qualified to be appointed as the IRP/Liquidator of any

CIRP/Liquidation, if otherwise not disqualified, and in the interest of avoiding administrative delays, it is necessary to have guidelines to prepare a Panel of IPs for the purpose of section 16(4) and 34(6) from amongst the registered IPs.

Panel of IPs

6. The Board will prepare a common Panel of IPs for appointment as IRPs and Liquidators and share the same with the AA. The AA may pick up any name from the Panel for appointment of IRP or Liquidator, as the case may be, for a CIRP or Liquidation process, respectively. The Panel will have Bench wise list of IPs based on the registered office of the IP. It will have a validity of six months and a new Panel will replace the earlier Panel every six months. For example, the first panel under these Guidelines will be valid for appointments

7. An IP will be eligible to be in the Panel of IPs if - (a) there is no disciplinary proceeding, whether initiated by the Board or the IPA of which he is a member, pending against him; (b) he has not been convicted at any time in the last three years by a court of competent jurisdiction; (c) he expresses his interest to be included in the Panel for the relevant period; and (d) he undertakes to discharge the responsibility as IRP or Liquidator, as he may be appointed by the AA.

8. An IP will be included in the Panel against the Bench under whose jurisdiction his registered office (his address as registered with the Board) is located. For example, an IP located in Kolkata will be included in Panel against the Kolkata Bench of the AA. The areas covered in respect of different Benches of the AA are as under:

Benches at	Area covered
New Delhi	1. Union territory of Delhi
Ahmedabad	1. State of Gujarat 2. State of Madhya Pradesh 3. Union territory of Dadra and Nagar Haveli 4. Union territory of Daman and Diu
Allahabad	1. State of Uttar Pradesh 2. State of Uttarakhand
Bengaluru	1. State of Karnataka
Chandigarh	1. State of Himachal Pradesh 2. State of Jammu and Kashmir 3. State of Punjab 4. Union territory of Chandigarh 5. State of Haryana
Chennai	1. State of Tamil Nadu 2. Union territory of Puducherry
Guwahati	1. State of Arunachal Pradesh 2. State of Assam 3. State of Manipur 4. State of Mizoram 5. State of Meghalaya 6. State of Nagaland 7. State of Sikkim 8. State of Tripura

Benches at	Area covered
Hyderabad	1. State of Andhra Pradesh 2. State of Telangana
Jaipur	1. State of Rajasthan
Kolkata	1. State of Bihar 2. State of Jharkhand 3. State of Odisha 4. State of West Bengal 5. Union territory of Andaman and Nicobar Islands
Kochi	1. State of Kerala 2. Union territory of Lakshadweep
Mumbai	1. State of Chhattisgarh 2. State of Goa 3. State of Maharashtra

Expression of Interest

9. The Board shall invite expression of interest from IPs in Form A to act as an IRP or Liquidator by sending an e-mail to IPs at their email addresses registered with the Board. The expression of interest must be received by the Board in Form A by the specified date. For example, the Board shall invite expression of interest by 7th December, 2018 from IPs for inclusion in the Panel for January - June, 2019. The interested IPs shall express their interest by 15th December, 2018. The Board will send the Panel to the AA by 25th December, 2018.

10. It must be explicitly understood that an IP, who is included in the Panel based on his expression of interest, must not: (a) withdraw his interest to act as IRP or Liquidator, as the case may be; (b) decline to act as IRP or Liquidator, as the case may be, if appointed by the AA; or (c) surrender his registration to the Board or membership to his IPA during the validity of the Panel.

11. It must be explicitly understood that: (a) the AA may require the Board to recommend an IP from or outside the Panel and in such cases, the Board shall accordingly recommend an IP; (b) an IP in the Panel can be appointed as IRP or as Liquidator, at the sole discretion of the AA; (c) the submission of expression of interest is an unconditional consent by the IP to act as an IRP or Liquidator, for any corporate debtor; and (d) an IP who declines to act as IRP or Liquidator, as the case may be, on being appointed by the AA, shall not be included in the Panel for the next five years, without prejudice to any other action that may be taken by the Board.

Ongoing Assignments

12. The eligible IPs will be included in the Panel in order of the volume of ongoing processes they have in hand. The IP who has the lowest volume of ongoing processes will get a score of 100 and will be at the top of the Panel. The IP who has the highest volume of ongoing processes will

get a score of 0. The difference between the highest volume and the lowest volume will be equated to 100 and other IPs will get scores between 0 and 100 depending on volume of their ongoing assignments.

Take an example:

IP	Volume of ongoing assignments	Difference between the highest volume and the volume of ongoing assignments of the IP	Formula	Score
1	20	100	$100 / 100 * 100$	100
2	40	80	$80 / 100 * 100$	80
3	60	60	$60 / 100 * 100$	60
4	80	40	$40 / 100 * 100$	40
5	100	20	$20 / 100 * 100$	20
6	120	00	$00 / 100 * 100$	00

13. An ongoing assignment shall be valued as under:

Ongoing assignments	Volume
IRP of a Corporate Insolvency Resolution Process	05
RP of a Corporate Insolvency Resolution Process	10
IRP of a Fast Track Process	03
RP of a Fast Track Process	06
Liquidation / Voluntary Liquidation	05
Individual Insolvency	01
Bankruptcy Trustee	01

Review

14. Where two or more IPs get the same score, they will be placed in the Panel in order of the date of their registration with the Board. The IP registered earlier will be placed above the IP registered later.

15. The above process will be undertaken by a team of officers of the Board, as may be identified by a Whole-Time Member

16. These guidelines will be reviewed by the Board from time to time.

17. These Guidelines shall come into effect for appointments as IRPs and Liquidators with effect from 1st January, 2019. 18. These Guidelines replace the Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2018.

Form A
EXPRESSION OF INTEREST TO ACT AS AN IRP IN CIRP AND LIQUIDATOR IN LIQUIDATION
PROCESS

1.	Name of Insolvency Professional	
2.	Registration Number	
3.	Address and contact details, as registered with the Board: a. E-mail b. Mobile c. Address	
4.	Number of ongoing assignments on hand:	
	a. As IRP of CIRP	
	b. As RP of CIRP	
	c. As IRP of Fast Track	
	d. As RP of Fast Track	
	e. Liquidation/Voluntary Liquidation	
	f. Individual Insolvency	
	g. Bankruptcy Trustee	
5.	Number of assignments completed as on date:	
	a. As IRP of CIRP	
	b. As RP of CIRP	
	c. As IRP of Fast Track	
	d. As RP of Fast Track	
	e. Liquidation/Voluntary Liquidation	
	f. Individual Insolvency	
	g. Bankruptcy Trustee	
6.	Whether IP has been convicted at any time in the last three years by a court of competent jurisdiction? (Give details)	
7.	Whether IP is serving a suspension or debarment from serving as an IP? (Give details)	
8.	Whether any disciplinary proceeding, whether initiated by the Board or the IPA, is pending against the IP? (Give details)	

Declaration: I hereby: -

confirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and express my interest to act as IRP or Liquidator, as the case may be, if appointed by the Adjudicating Authority.

undertake that if my name is included in the Panel, I shall abide by the Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) (Second) Guidelines, 2018.

undertake that submission of this form is my unconditional consent to act as an IRP or Liquidator at the sole discretion of the Adjudicating Authority during the validity period of the Panel under the Guidelines (1st January, 2019 – 30th June, 2019).

undertake that I shall not decline to act as IRP or Liquidator, as the case may be, on being appointed by the Adjudicating Authority.

Signature of Insolvency Professional

Place:

Date:



**INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA**