

ICSI IIP – IBC KNOWLEDGE CAPSULE 3

Role of an Insolvency Professional as per the Code and its Regulations, Orders of Adjudicating Authorities and IBBI Orders

The following table shows a list of the roles to be performed by Insolvency Professionals during the Corporate Insolvency Resolution Process. The list is divided into five types of categories with respect to the source that their role is defined by.

Code and Regulations	
Supreme Court	
NCLAT	
NCLT	
IBBI	

S. No.	ROLE DEFINED	SOURCE
1.	Making public announcement within 3 days of appointment and calling for submission of claims.	Sec 13(2) & 15 and Reg 6(1)& 6(2)
2.	Management of affairs of the CD, exercise the powers of the Board of Directors of the CD, etc.	Sec 17
3.	Compliance with the requirements under any law on behalf of the CD during CIRP	Sec 17(2)(e)
4.	Collecting all information relating to the assets, liabilities, finances and operations of the CD	Sec 18(1)(a)
5.	Receiving, collating and verifying claims	Sec 18(1)(b) and Reg 13 & 14
6.	Monitoring of the assets of CD, manage its operations, take control and custody of its assets	Sec 18(1)(d) & (f)
7.	Ascertaining class(es) of creditors, identifying and selecting AR, applying to AA for appointment of AR, provide list of such creditors to AR, provide electronic means of communication between AR and such creditors	Sec 21(6A) & (b) and Reg 4A & 16A

8.	Constitution of CoC and filing report with the AA	Sec 18(1)(c) & 21(1) and Reg 17(1)
9.	Holding the first meeting of the CoC within seven days of filing report	Sec 22(1) and Reg 17(2)
10.	Convening attend and conduct of meetings of CoC, including participation through video conferencing and voting through electronic means	Sec 24 & 25(2)(f) and Reg 23 to 26
11.	Convening meetings of CoC whenever required or on request made by members of CoC representing 33% of voting rights	Sec 24 & 25(2)(f) and Reg 18
12.	Filing of information with information utility	Sec 18(1)(e)
13.	Make application to the AA in case of non-cooperation from CD	Sec 19(2)
14.	Protect and preserve the value of property of the CD and manage its operations as a going concern	Sec 20(1) & 20(2)(e)
15.	Appointing accountants, legal or other professionals, as may be necessary	Sec 20(2)(a) & 25(2)(d)
16.	Enter into contracts on behalf of CD or amend contracts entered into before commencement of CIRP	Sec 20(2)(b)
17.	Raise interim finance (within the limits set by CoC)	Sec 20(2)(c)
18.	Issue instruction to personnel of the CD for keeping it as a going concern	Sec 20(2)(d)
19.	Make financial information available to CoC within seven days of such requisition under section 21(9)	Sec 21(10)
20.	Filing of withdrawal application before the AA	Sec 12A and Reg 30A
21.	Disclosure of insolvency resolution process costs	Sec 18(1)(g) and Reg 34A*
22.	Preserving of records relating to CIRP of CD	Sec 208 (2)(e) and Reg 39A

23.	Conducting of the CIRP in compliance with the procedure under the Code and Regulations	Sec 23(1)
24.	Preserve and protect the assets of the CD including continued business operations of CD	Sec 25(1)
25.	Take control and custody of all assets of CD	Sec 25(2)(a)
26.	Represent and act on behalf of the CD with third parties, exercise rights for the benefit of CD in judicial, quasi-judicial and arbitration proceedings	Sec 25(2)(a)
27.	Preparation and circulation of IM to CoC	Sec 25(2)(g) & 29(1) and Reg 36(1)
28.	Providing information having a bearing on the Resolution Plan, upon request from a member of the CoC	Sec 240(1) and Reg 36(3)
29.	Obtaining confidentiality undertaking from prospective RAs and CoC	Sec 29(2) and Reg 36(4)
30.	Publishing of invitation for EOI from prospective RAs	Sec 25(2)(h) and Reg 36A(1) to (3)
31.	Due diligence of EOIs received to assess compliance with criteria specified including seeking clarification/additional information	Sec 25(2)(k) and Reg 36A(8) & (9)
32.	Issue provisional list of eligible prospective RAs	Sec 25(2)(k) and Reg 36A(10)
33.	Issue final list of eligible prospective RAs	Sec 25(2)(k) and Reg 36A(12)
34.	Issue of IM, EM and RFRP (including performance security requirements)	Sec 25(2)(g) & (h) r/w 29 and Reg 36B(1) to (5)
35.	Present all Resolution Plans which fulfill required criteria at the meeting of CoC	Sec 25(2)(i) and Reg 37,38 & 39

36.	File application for avoidance of transactions	Sec 25(2)(j)
37.	Appointment of Registered Valuers	Sec 25 (2)(d) & Reg 27
38.	Notifying each participant of CoC and AA of any change in CoC consequent to assignment or transfer of debt by a creditor	Sec 24(8) and Reg 28
39.	i) Determination of transactions of the nature of preferential, undervalued, extortionate, fraudulent trading or wrongful trading; (ii) intimation to the IBBI; and (iii) applying to the AA for appropriate relief	Sec 25(2)(j), 43,45, 50, 66 and Reg 35A
40.	Submission of compliant resolution plans to CoC (mandatory contents including details of previous non implementation, if any, of Resolution Plan by RAs) along with details of irregular transactions (if any)	Sec 30(2) & (3) and Reg 38 & 39(2)
41.	Submission of Resolution Plan approved by CoC to AA along with compliance certificate in Form H and the evidence of receipt of performance security	Sec 30(6) and Reg 39(4)
42.	Continuing to manage the operation of CD until the order is passed by the AA under section 31	Proviso to Sec 23(1)
43.	Communicating order of the AA on Resolution Plan to participants and RAs	Sec 240 and Reg 39(5)
44.	Abide by the code of conduct	Sec 208(2) & Reg 7(2)(h) r/w First Schedule of IP Regulations
45.	Disclosure of pecuniary or personal relationship with stakeholders or association with FC	Sec 208(2) & Items - 8 & 8A of First Schedule of IP Regulations**
46.	RP is not empowered to 'decide' whether resolution plan contravenes any provisions of the law.	Arcelormittal India Private Limited v. Satish Kumar Gupta and Ors.
47.	The Role of RP is not adjudicatory but administrative.	Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs.

		Satish Kumar Gupta & Ors.
48.	The Resolution Professional is not required to express his opinion on matters within the domain of the financial creditors, to approve or reject the resolution plan, under section 30(4).	In the matter of K Sashidhar Vs Indian Overseas Bank & Ors
49.	The RP cannot hold or decide as to who is ineligible under Section 29A. Neither Section 30 (2) nor any other provision in the Code confers such power on the RP to scrutinize the eligibility of Resolution Applicants.	Rajputana Properties Pvt. Ltd. v. Ultra Tech Cement Ltd. & Ors.
50.	The RP is required to examine whether the resolution plan confirms the provisions as mentioned therein, but he cannot disclose it to any other person, including resolution applicant(s) who has submitted the resolution plan.	Rajputana Properties Pvt. Ltd. v. Ultra Tech Cement Ltd. & Ors.
51.	The RP is not only required to give notice of the meeting to the members of CoC, but also to the members of suspended Board of Directors or partners of the corporate person, as the case may be.	Rajputana Properties Pvt. Ltd. v. Ultra Tech Cement Ltd. & Ors.
52.	The nature of duties assigned to a RP is similar to a public servant, as he is being an appointee of the Code.	Numetal Ltd. v. Satish Kumar Gupta and Ors.
53.	RP should not get into the domain of approving Resolution Plans	Binani Industries Limited v. Bank of Baroda and Another
54.	RP has no jurisdiction to determine the claim after the claim has been determined by AA.	Mr. S. Rajendran, RP v. Jonathan Muralidarane
55.	RP has to be careful for excess claims made by financial creditors against corporate debtor	S. A Consultants & Forwarders Pvt. Ltd. v. Cargo Planners Limited
56.	RP should not accept too many assignments.	IDBI Bank Ltd. v. Lanco Infratech Ltd.
57.	RP should only engage another counsel if he is incapable of handling the matter on his own.	In the matter of Vedikat Nut Crafts Pvt. Ltd
58.	RP should not ask for exaggerated insolvency resolution cost.	Punjab National Bank v. DivyaJyoti Sponge Iron Pvt. Ltd.
59.	RP has to follow the directions of the Tribunal and non compliance of the same will result in penalty.	V. Nagarajan v. K. Subburaj & Others
60.	Earlier RP will have to cooperate with the new RP wherever they require.	InderPreet Singh v. Mariners Buildcon India Limited

61.	RP should follow the timeline prescribed under the Code.	Anil Goel v. LML Ltd.
62.	RP has to comply with the provisions of the Code in submitting the resolution plan before CoC.	Braj Bhushan Das & Ors. v. Mr. Vijay Kumar V Iyer, RP
63.	RP cannot file for liquidation before inviting applications for resolution plans.	Sunrise Polyfilms Pvt Ltd. v. Punjab National Bank
64.	RP has to be an independent party for conducting CIRP. They cannot be related party of either the Corporate Debtor or any creditor.	Mussadi Lal Kishan Lal v. Ram Dev Int. Ltd
65.	After approval of resolution plan by the CoC, the RP cannot file an application for withdrawal as per Section 12A of the Code.	Punjab National Bank v. Mintri Tea Company Private Limited
66.	RP should not mislead the CoC, NCLT and IBBI during CIRP.	In the matter of Mr. Mukesh Mohan, Insolvency Professional
67.	RP should consider the claims he receives and follow the timeline for the CIRP.	In the matter of Mr. Dhaivat Anjaria, Insolvency Professional
68.	RP should not charge exorbitant fees for any assignment.	In the matter of Ms. Bhavna Sanjay Ruia, Insolvency Professional
69.	RP cannot make false claims in the Expression of Interest (EoI) and cannot take post facto approval of the CoC.	In the matter of Mr. Mukesh Mohan, Insolvency Professional
70.	RP should not allow authorized auditors to raise invoices for his fees and out of pocket expenses.	In the matter of Mr. Dinkar T. Venkata Subramanian, Insolvency Professional
71.	RP should not make misleading statements and adhere to every guideline to stay a fit and proper person to continue as an IP.	In the matter of Martin S.K. Golla, Insolvency Professional
72.	RP shall consider the eligibility criteria of Resolution Applicants and publish the same in newspaper in accordance with law and given timelines.	M. K. Shah Exports Ltd. v. Assam Company India Ltd.
73.	IRP can refer any violation / tainted/illegal transaction committed by the ex management/ ex-directors or anyone else to AA	Deepak Seth v. Moods Hospitality Private Limited
74.	IRP has the powers of a Court Officer.	Asset Reconstruction Company (India) Private Limited v. Shivam Water Treaters Private Limited

*Read with Circular No. IBBI/IP/013/2018 dated 12th June, 2018 issued by IBBI

**Read with Circular No. IP/005/2018 dated 16th January, 2018 issued by IBBI

Notes:

Abbreviations used:

IBBI: Insolvency and Bankruptcy Board of India

IPA: Insolvency Professional Agency

ICSI IIP: ICSI Institute of Insolvency Professionals

IP: Insolvency Professional

CIRP: Corporate insolvency resolution process

IRP: Interim Resolution Professional

AR: Authorised Representative

COC: Committee of Creditors

CD: Corporate Debtor

FC: Financial Creditor

OC: Operational Creditor

RA: Resolution Applicant

IP Regulations: IBBI (Insolvency Professionals) Regulations, 2016

Code: Insolvency and Bankruptcy Code, 2016

Section means a section of the Insolvency and Bankruptcy Code, 2016

Regulation means the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 unless specified otherwise.

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