



IBC KNOWLEDGE CAPSULE 20

Framework for “Disciplinary Mechanism” under IBC

Introduction:

The Insolvency and Bankruptcy Code, 2016 envisages the role of a new professional known as the ‘*Insolvency Professional*’. The role of Insolvency Professional is crucial, his conduct may affect the interest of various stakeholders or he may fail to comply with the provisions of the IBC, 2016, rules, regulations, guidelines or orders issued thereunder. Such an important Professional cannot be left non-regulated, therefore it is necessary to have an objective, credible mechanism which does not spare any misconduct, while it does not penalize an honest conduct of an Insolvency Professional. This capsule discusses the disciplinary mechanism under IBC and the disciplinary actions taken against Insolvency Professionals so far.

The IBBI exercises regulatory oversight over IPAs, IPs and IU. IPAs also regulate IPs. Therefore, the IBC provides for a two-tier regulatory regime for the IPs, the IBBI and the IPAs which are regulated by the IBBI.

The process of Disciplining the IPs by IBBI is comprised in Section 217, 218, 219, 220 of the Insolvency and Bankruptcy Code, 2016, IBBI (Inspection and Investigation) Regulations, 2017 and IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017.

The available framework with important provisions and orders passed by IBBI in its disciplinary proceedings are summarized in the table below.

The table has been color coded as follows:

Provisions of the Code	
Rules/Regulations under the Code	
Orders passed by IBBI in its disciplinary proceedings	
Circulars/Notifications/Reports	

TABLE: “Disciplinary Mechanism” under IBC

<u>Source</u>	<u>Details /Excerpts</u>	<u>Explanation</u>
Section 217 of the Code	217. Complaints against insolvency professional agency or its member or information utility. - Any person aggrieved by the functioning of an insolvency professional agency or insolvency professional or an information utility may file a complaint to the Board in such form, within such time and in such manner as may be specified.	The Code lays down procedure for complaint by any person aggrieved by the functioning of IRP/RP or on contravention by IRP/RP of any provisions of the Code or directions of IBBI under section 217 of the Code.
Section 218 of the Code	218. Investigation of insolvency professional agency or its member or information utility.	Section 218 allows IBBI to order inspection or investigation either on receipt of a complaint or when it has reasonable ground to believe that an IP has contravened any provision of the law. Thus, the Board can take cognizance of a contravention <i>suo moto</i> and order an inspection
Section 220 of the Code	220. Appointment of disciplinary committee. - (1) The Board shall constitute a disciplinary committee to consider the reports of the investigating Authority submitted under sub-section (6) of section 218	A Disciplinary Committee is appointed by the IBBI to look into the report prepared by Investigating Authority under section 220 of Code.
Regulation 11(1) of the IBBI (IP) Regulations, 2016	Based on the findings of an inspection or investigation, <u>or on material otherwise available on record</u> , if the Board is of the prima facie opinion that sufficient cause exists to take actions permissible under section 220, it shall issue a show-cause notice to the insolvency professional.	This Regulation also gives power to the Board to take up <i>suo moto</i> cognizance of a matter.
Insolvency and Bankruptcy Code, 2016, IBBI (Inspection and Investigation) Regulations, 2017	With about 14 provisions, it provides how the process of inspection of Insolvency Professionals will be conducted by IBBI. It also provides the procedure and contents for show cause notices to be issued by IBBI.	Full text available at: https://ibbi.gov.in/webadmin/pdf/legalframework/2017/Sep/14th%20Jun%202017%20Insolvency%20and%20Bankruptcy%20Board%20of%20India%20(Inspection%20and%20Investigation)%20Regulations,%202017-09-25%2014:24:46.pdf
IBBI (Grievance and Complaint Handling Procedure) Regulations,	With about 8 provisions, it provides the system in which investigation and inspection is done to target a specific complaint or grievance that is received by IBBI against the	Full text available at: https://ibbi.gov.in/webadmin/pdf/legalframework/2017/Dec/180723-2017-

2017.	Insolvency Professional.	12-09%2009:59:43.pdf
<i>Insolvency and Bankruptcy Board of India (IBBI) Vs. Shri Rishi Prakash Vats & Ors</i>	Once a disciplinary proceeding was initiated by the IBBI on the basis of evidence on record, it was for the Disciplinary Authority, i.e., IBBI to close the proceeding or pass appropriate orders in accordance with law. Such power having been vested with IBBI and in absence of any power with the Adjudicating Authority/ (National Company Law Tribunal), the Adjudicating Authority could not quash the proceeding, even if proceeding was initiated at the instance and recommendation made by the Adjudicating Authority/ National Company Law Tribunal.	Link for full text: https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/Insolvency%20and%20Bankruptcy%20Board%20of%20India%20(IBBI)%20Vs%20Shri%20Rishi%20Prakash%20Vats%20&%20Ors.%20CA%20(AT)%20(Insolvency)%20No.324-2019_2019-07-14%2010:48:26.pdf
Order No. IBBI/DC/26/2020 dated 08.06.2020	<i>As per the obligations imposed by section 208(2)(a) of the Code, it is the duty of the RP to take reasonable care and diligence while performing his duties. However, the RP not only failed to bring to the notice of the CoC the embargo imposed on the transfer of the assets of the CD during CIRP under section 14 of the Code but also allowed the moratorium to be violated continuously by letting the EMIs to be deducted out of the cash flows/rental income of the CD. This indicates RP's casualness and negligence in performing his duty as RP misunderstanding of law.</i>	Penalty: IP shall pay a penalty equal to 25% of fee payable to him as per agreed terms and conditions in CIRPs of GGL, NBL and NWL where he has acted as an IRP/RP. The penalty amount shall be deposited by a crossed demand draft payable in favor of the "Insolvency and Bankruptcy Board of India" within 45 days of this order. The Board in turn shall deposit the penalty amount in the Consolidated Fund of India. IP shall also undergo pre-registration educational course from the IPA of which he is a member and pass the Limited Insolvency Examination again to build his capacity to take up assignments on his own.
Order No. IBBI/DC/25/2020 dated 02.06.2020	The RP had appointed two unregistered entities as Registered Valuers of the CD on 23rd February 2019 in contravention of Regulation 27 of the CIRP Regulations and IBBI Circular IBBI/RV/019/2018 dated 17.10.2018 and an unauthorised transaction made in favor of Ireo Waterfront Pvt. Ltd. was within the knowledge of RP. However, the RP had not taken any action for 245 days towards correcting the unauthorised	Penalty: The registration of Insolvency Professional was suspended for three months

		transaction until the IA pointed out the issue, no discussions before CoC were held regarding the transfer to a group company or any action to be taken thereof and neither did the RP mention the unauthorised transaction in the scope of the Forensic and Transaction Audit Agreement	
Order IBBI/DC/24/2020 30.05.2020	No. dated	As per the obligations imposed by section 208(2)(a) of the Code, it is the duty of the RP to take reasonable care and diligence while performing his duties. However, the RP not only failed to bring to the notice of the CoC the embargo imposed on the transfer of the assets of the CD during CIRP under section 14 of the Code but also allowed the moratorium to be violated continuously by letting the EMIs to be deducted out of the cash flows/rental income of the CD. This indicates RP's casualness and negligence in performing his duty as RP misunderstanding of law.	Penalty: The DC of IBBI imposed penalty equal to twenty five percent of the fee , IP had received in this process. This twenty-five percent works out as Rs. 34,22,500/- (Thirty-Four Lakh Twenty-Two Thousand and Five Hundred only) and directed him to deposit the penalty amount by a crossed demand draft payable in favour of the "Insolvency and Bankruptcy Board of India" within 45 days from the date of issue of this order. The Board in turn shall deposit the penalty amount in the Consolidated Fund of India.
Order IBBI/DC/23/2020 27.04.2020	No. dated	Despite the IBBI Circular dated 12.06.2018 clearly stating that Insolvency Resolution Process Cost (IRPC) shall not include any expense incurred by a member of CoC or a professional engaged by them, the RP charged the fee of lender's legal counsel from the Insolvency Resolution Process Cost. Resolution Professional, on the direction of COC, finalized the appointment of a Professional to conduct second forensic audit. The fees should have been borne by the CoC members themselves but the same was included as IRPC. Resolution Professional shared a confidential document i.e. Information Memorandum prior to the issue of Invitation of Expression of Interest to ensure that they would qualify as eligible prospective resolution applicants.	Penalty: Suspended the registration of Insolvency Professional for six months. Directed the Resolution Professional to secure reimbursement of the amount which was paid to lender's legal counsel and charged to IRPC. Directed the Resolution Professional to secure reimbursement of the amount which was paid to professional for conducting second forensic audit and charged to IRPC.
Order IBBI/DC/22/2020 21.04.2020	No. dated	As per IBBI (CIRP) Regulations, third valuer is to be appointed only if the estimates submitted by the two valuers appointed earlier are significantly different. The Resolution Professional	Penalty: Directed the Insolvency Professional to deposit the amount in the Liquidation Estate of CD which he

		permitted conduct of third valuation upon the desire of CoC despite of the fact that there was no significant difference between the two valuations. He further incurred additional financial costs upon an over-burdened CD. As per IBBI (Liquidation Process) Regulations, 2016, in cases where the Liquidator fees has not been decided by the CoC, then the liquidator is entitled to a fee as per the table provided in the Regulations. The IP continued to charge the same fees during liquidation process which he was charging while acting as an RP.	has drawn without any authorization while acting as liquidator. However, the IP can claim liquidator fees as per IBBI (Liquidation Process) Regulations, 2016.
Order IBBI/DC/21/2020 20.04.2020	No. dated	The RP had outsourced his duty and engaged IPE for verification of claims. He further included the payment made for the same in the IRPC thereby burdening the ailing Corporate Debtor with additional costs.	Penalty: Imposed monetary penalty of Rs. 1,00,000/- (Rs. One Lakh only).
Order IBBI/DC/20/2020 20.03.2020	No. dated	The IP (Liquidator) failed to publish the public announcement in the newspapers within the time prescribed. He engaged the services of professional for auditing financial information of Corporate Debtor under voluntary liquidation when they were also the statutory auditors prior to commencement of voluntary liquidation which is in contravention of Regulation 11(2) of Voluntary Liquidation Process Regulations.	Penalty: Imposed monetary penalty of Rs. 1,00,000/- (Rs. One Lakh only).
Order IBBI/DC/15/2019-20 14.11.2019	No. dated	The IP failed to make disclosures with respect to appointment of an LLP (in which he was a partner) as an IPE contravening the directions under the Circular issued by IBBI. The IP allowed charging fee of Rs. 12,09,90,185/- payable to lender's legal counsel as an IRPC and abdicated his authority in favour of CoC. He paid expenses of third party from CD and included in IRPC. He deliberately in connivance with some stakeholders squandered the assets (money) for unlawful purpose. The IP shared the fee, which can be paid only to an individual acting as an IP, with an LLP (in which he was a partner) against the provisions of the Code and the Regulations.	Penalty: Imposed penalty of ten percent of the RP's fee Directed the RP to make good the loss by securing reimbursement and deposit the amount of Rs. 12,09,90,185/- in the account of Corporate Debtor.
Order IBBI/DC/16/2019 17.04.2019	No. dated	The IP attempted to charge abnormally high fee in relation to the services. Besides, he acted malafide by seeking increase of his fee after approval of fee by the AA.	Penalty: Suspended the registration of the Insolvency Professional for two

		<p>He, then IRP signed the term sheet with the applicant, who is not legally competent to appoint RP or fix his fee, and thereby attempted to deprive the CoC of its legitimate right to appoint a RP of its choice and fix his fee.</p> <p>He did not cooperate with Inspecting Authority</p> <p>He filed applications for initiating CIRP of 14 CDs and proposed to appoint his spouse, as IRP of CIRP of all 14 CDs. He failed to avoid conflict of interest, and act with integrity and independence.</p>	<p>years.</p> <p>He was also directed to undergo the pre-registration educational course conducted by Insolvency Professional Agency.</p>
Order IBBI/DC/15/2019 21.02.2019	No. dated	<p>The IP consented to act as IRP of 15 CIRPs for which applications were filed by a professional, her husband. In the process, she compromised her independence, integrity and impartiality.</p> <p>The IP consented to act as IRPs of 15 CIRPs simultaneously, even though she has absolutely no experience whatsoever and no capacity;</p> <p>The IP contracted to act as IRPs for exorbitant of fees. It was not reasonable reflection of the work.</p>	Penalty: Cancelled the registration of IP and debarred her from seeking fresh registration as an IP or providing any service under IBC for ten years.
Order IBBI/DC/14/2018 28.01.2019	No. dated	<p>The IP failed to manage the operations of the two Corporate Debtors as going concern. He did not submit progress report to Adjudicating Authority in time, make public announcement in time, appoint registered valuers, prepare and circulate information memorandum, invite resolution plans.</p> <p>He resigned as Resolution Professional without prior permission of the Adjudicating Authority.</p>	Penalty: Imposed monetary penalty equal to the total fee payable to Insolvency Professional and directed to undergo the pre-registration educational course conducted by Insolvency Professional Agency.
Order IBBI/DC/13/2018 07.01.2019	No. dated	<p>The IP displayed a laid-back attitude, gave up even before trying and practically abandoned the CIRP. During his term as RP, he did not do anything, which an RP is required to do, except having one meeting of the CoC and submitting two progress reports and, therefore, contravened provisions of sections 20 and 23 of the Code.</p>	Penalty: Imposed monetary penalty equal to the total fee payable to Insolvency Professional as IRP and as RP.
Order IBBI/DC/12/2018 12.11.2018	No. dated	<p>The IP connived with sole financial creditor, resolution applicant who was ineligible u/s 29A and allowed 'One Time Settlement' (OTS) in the garb of resolution plan. He did absolutely nothing either to run the business of the CD or to run the CIRP.</p>	Penalty: Cancelled the registration of the IP and debarred him from seeking fresh registration as an IP or providing any service under the IBC, 2016 for ten years

<p>Order IBBI/DC/10/2018 15.10.2018</p> <p>No. dated</p>	<p>The IP did not have a single meeting of the CoC in his term as the RP. (There was one when he was IRP). The fact that IP did not receive any resolution plan was not informed to the CoC. Instead of working for resolution of the corporate debtor, he worked for its liquidation</p>	<p>Penalty: Imposed monetary penalty equal to the total fee payable to IP as IRP and as RP.</p> <p>Directed to undergo the pre-registration educational course conducted by Insolvency Professional Agency</p>
<p>Order IBBI/DC/09/2018 06.09.2018</p> <p>No. dated</p>	<p>An IP misled the stakeholders of the insolvency and bankruptcy by incorporating a LLP by name, "IBBI Insolvency Practitioners LLP".</p> <p>The name of the LLP is misleading as it gave an impression that the LLP is in some way associated with the IBBI.</p>	<p>Penalty: Suspended the registration of IP for three months.</p> <p>Prohibited to take any new assignment till "IBBI Insolvency Practitioners LLP" is removed from the Company / LLP Master Data of the Ministry of Corporate Affairs</p>
<p>Order IBBI/DC/08/2018 23.08.2018</p> <p>No. dated</p>	<p>The IP had authorized an LLP of which he was a partner to raise invoices of his professional fees, thereby treating the profession of IP as employment under an entity. The IP was appointed and the firm was neither appointed by CoC nor NCLT.</p>	<p>Penalty: Imposed penalty of one lakh rupees on IP.</p>
<p>Order IBBI/DC/07/2018 23.08.2020</p> <p>No. dated</p>	<p>IBBI directed the IP to issue fresh advertisement for expression of interest (EoI) but IP did not comply with the direction.</p> <p>The IP disregarded the directions of NCLAT.</p> <p>He engaged in private communication with a financial creditor for finalizing the eligibility criteria in invitation for expression of interest (EoI) while the law required him to take approval of CoC.</p> <p>He outsourced his responsibility to a third person to certify eligibility of resolution applicants.</p> <p>He did not file applications before NCLT in respect of irregular transactions in CD even after having complete information and direction from the CoC to do so, ignoring statutory obligations.</p> <p>He abused his authority to appoint valuers and forensic</p>	<p>Penalty: Cancelled the registration of the IP and debarred him from seeking fresh registration as an IP or providing any service under the IBC, 2016 for ten years.</p>

		auditors who were not independent of the stakeholders.	
Order No. IBBI/DC/04/2018 dated 03.05.2018		The IP charged exorbitant fees. The same was not reasonable reflection of work done. She misled an operational creditor to sign term sheet engaging her as RP and fixing her fees even before commencement of the CIRP. She attempted to misled the stakeholders, IBBI and the Disciplinary Committee	Penalty: Suspended the registration of IP for a period of one year.
Order No. IBBI/Ref-Disc.Comm./02/2018 dated 13.04.2018		The IP did not consider the claim of claimant and even failed to respond to claimant despite follow up. He disregarded the timelines provided under the code. He disregarded repeated requests of the Board for a response on the complaint.	Penalty: Imposed a monetary penalty equal to one tenth of the total fee payable to him as IRP and RP.
The Report of the Bankruptcy Law Reforms Committee (BLRC) (November 2015)		<i>“the Committee believes that a new model of “regulated self regulation” is optimal for the IP profession. This means creating a two tier structure of regulation. The Regulator will enable the creation of a competitive market for IP agencies under it. This is unlike the current structure of professional agencies which have a legal monopoly over their respective domains. The IP agencies under the Board will, within the regulatory framework defined, act as self-regulating professional bodies that will focus on developing the IP profession for their role under the Code. They will induct IPs as their members, develop professional standards and code of ethics under the Code, audit the functioning of their members, discipline them and take actions against them if necessary. These actions will be within the standards that the Board will define. The Board will have oversight on the functioning of these agencies and will monitor their performance as regulatory authorities for their members under the Code. If these agencies are found lacking in this role, the Board will take away their registration to act as IP agencies.”</i>	Link for full report: https://ibbi.gov.in/BLRCReportVol1_04112015.pdf

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
Code: Insolvency and Bankruptcy Code, 2016

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