



## IBC KNOWLEDGE CAPSULE 21

### Framework for “*Disciplinary Mechanism of Insolvency Professional Agencies (IPAs) under IBC*”

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#### **Introduction:**

The Insolvency Professional Agencies (IPAs) regulates Insolvency Professionals (IPs) as its members in accordance with Insolvency and Bankruptcy Code, 2016 read with regulations and rules made there under. IPAs formulate and codify the procedures to deal with disciplinary matters, which ensure proper conduct on the part of the members of IPAs and to deal with the cases of violation of Code as well as rules and regulations framed there under.

As per Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, the Insolvency Professional Agency is required to have a Disciplinary Policy in terms of which it may initiate disciplinary proceedings by issuing a show-cause notice against members -

1. based on a reference made by the Grievances Redressal Committee;
2. based on monitoring of professional members;
3. following the directions given by the IBBI or another competent Body or any Court of Law or any other
4. agency authorized by law to file a cognizable report;
5. suo moto, based on any information received by it.

The available framework with important provisions under the Code and orders passed by Insolvency Professional Agency (IPA) of ICSI, i.e., ICSI IIP 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 of IPAs” under IBC**

<b>Source</b>	<b>Details /Excerpts</b>	<b>Explanation</b>
Section 196(2) (p) of the Code	<i>(2) The Board may make a model bye-laws to be adopted by the insolvency professional agency which may provide for – ... (p) the manner of conducting disciplinary proceedings against its members and imposing penalties;”</i>	IBBI may make model bye-laws to be adopted by insolvency professional agencies which may provide for, inter alia, the manner of conducting disciplinary proceedings against its members and imposing penalties.
Section 205 of the Code	<i>205. Insolvency professional agencies to make bye-laws. – Subject to the provisions of this Code and any rules or regulations made thereunder and after obtaining the approval of the Board, every insolvency professional agency shall make bye-laws consistent with the model bye-laws specified by the Board under sub-section (2) of section 196.</i>	Every Insolvency Professional Agency to make bye-laws which are consistent with the model bye-laws specified by IBBI.
Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 [“IBBI Model Bye-Laws Regulations”]	It is necessary to formulate a Disciplinary Policy and constitute a Disciplinary Committee to deal with cases of violation of the Code as well as the rules and regulations framed thereunder by the professional members enrolled with ICSI IPA.	Link for entire Regulations: <a href="https://ibbi.gov.in/uploads/law/Model_by_laws.pdf">https://ibbi.gov.in/uploads/law/Model_by_laws.pdf</a>
Part X of the Schedule under the IBBI Model Bye-Laws Regulations	The Disciplinary Policy shall, inter alia, stipulate the following: (a) the manner in which the Disciplinary Committee may ascertain facts of a complaint, information, reference, or directions; (b) the issue of show-cause notice based on such facts; (c) disposal of show-cause notice by a reasoned order; (d) timelines for different stages of disposal of the show-cause notice; and (e) rights and obligations of the parties to the	Link for Schedule: <a href="https://ibbi.gov.in/uploads/law/Model_by_laws.pdf">https://ibbi.gov.in/uploads/law/Model_by_laws.pdf</a>

	proceedings.	
Disciplinary Policy of IPA registered with IBBI	The main objective of the Disciplinary Policy is to codify the process to deal with disciplinary matters of the professional members based on any complaint received by IPA; or suo moto based on any information; or reference made by the Grievance Redressal Committee or the Monitoring Committee; or directions received from IBBI or court of law.	<p>Link for ICSI IIP Policy: <a href="https://icsiip.com/Portals/0/Disciplinary%20Policy.pdf">https://icsiip.com/Portals/0/Disciplinary%20Policy.pdf</a></p> <p>Link for Insolvency Professional Agency of Institute of Cost Accountants of India Policy: <a href="http://www.ipaicmai.in/IPA/Upload/Disciplinary-Policy.pdf">http://www.ipaicmai.in/IPA/Upload/Disciplinary-Policy.pdf</a></p> <p>Link for Indian Institute of Insolvency Professionals of ICAI (IIPI) Policy: <a href="https://www.iiipicai.in/images/PDF/Board Meeting IIPI Revised Disciplinary Policy final.pdf">https://www.iiipicai.in/images/PDF/Board Meeting IIPI Revised Disciplinary Policy final.pdf</a></p>
Order No. ICSI IIP/DC/14/2020 dated 7 <sup>th</sup> September 2020	The Insolvency Professional failed to provide the date on which minutes of meeting were circulated with participants. It was observed by the Disciplinary Committee that the Corporate Debtor has not filed its financials to MCA since 2012. IP had failed to prepare Information Memorandum within the stipulated period and reportedly have not done so till date.	Penalty: In view of the above, the Disciplinary Committee imposes a penalty of Rs.10,000/- to be deposited by a demand draft payable in favour of the ICSI Institute of Insolvency Professionals within 30 days of the issue of order. The ICSI IIP shall in turn deposit the said penalty amount in the Insolvency and Bankruptcy Fund.
Order No. ICSI IIP/DC/02/2020 to Order No. ICSI IIP/DC/13/2020 dated 7 <sup>th</sup> September 2020	Several Insolvency Professionals were issued show cause notices for having failed to obtain a Authorization for Assignment (AFA)	<p>Penalty: DC directed that the IP shall not accept any new assignment without obtaining Authorisation for Assignment in view of Regulation 12A of Bye Laws of ICSI Institute of Insolvency Professionals.</p> <p>All the IPs in contravention were issued a warning and some were issued a penalty of Rs. 10,000 if the contravention was found to be intended.</p>

<p>Order No. ICSI IIP/DC/01/2020 dated 15<sup>th</sup> July 2020</p>	<p>The major allegation levelled against IP inter alia includes that Mr. Mohan demanded bribe from the consultant who had worked in FR Tech, Hyderabad, which became insolvent under the Insolvency and Bankruptcy Code, wherein IP was appointed as Interim Resolution Professional (IRP) by National Company Law Tribunal, Mumbai Bench <i>vide</i> order 14.11.2019.</p> <p>The Disciplinary Committee observed that IP in his reply has submitted the copy of order passed by the Hon'ble CBI Court on 25,01.2020, wherein bail was allowed to IP on furnishing personal bond and surety bond in the sum of Rs 50,000/- each with two sureties.</p>	<p>Penalty: Disciplinary Committee was of the view that since criminal proceedings was already pending against IP, it would be impermissible for a quasi-judicial forum to decide and permit re-agitation of the same issues which are pending before a judicial forum.</p> <p>Therefore, the Authorisation of Assignment (AFA) of IP will remain suspended till any further order.</p>
<p>Order No. IIIPI/DC/06/2019-20 dated 30<sup>th</sup> May 2019</p>	<p>Committee noted that being Professional, there is a clear case of Conflict of Interest and it would have been better if the IP could have submitted his in-ability to proceed with rather appointing relative (spouse) on a position which could hamper his independence, which is clear case of contravention of the provisions of sections 20, 23, 208(2)(a) of the Code regulations 7(2)(a) and (h) of the IPR and clauses 1, 2, 3, 5, 9, 10, 12, 14 and 25 of the Code of Conduct thereof.</p>	<p>Penalty: (i) The Membership of IP as an Insolvency Professional with IIIPI of ICAI was suspended for the period for which his registration has been suspended by IBBI <i>vide</i> order dated 17-04-2019;</p> <p>(ii) IP shall not seek or accept any process or assignment or render any services under the Code during the period of suspension. He shall, however, continue to conduct and complete the assignments / processes he has in hand as on date of this order; and</p> <p>(iii) IP shall: (a) undergo the pre-registration educational course specified under Regulation 5(b) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 from IIIPI, and (b) work for at least six months as an intern with a senior insolvency professional, at any time during the period of suspension, to improve his</p>

		<p>understanding of the Code and the regulations made thereunder.</p> <p>(iv) Since the matter is related to professional misconduct and respondent being a Chartered Accountant, a copy of this order may also be send to The Institute of Chartered Accountants of India (ICAI) for any future course of action, if required.</p>
Order No. IIIPI/DC/05/2018-19 dated 17 <sup>th</sup> December 2019	<p>It was found that IP should have taken pro-active steps to appoint such registered valuers failing in the same reflects his negligence in conducting the CIRP as per the law and therefore, have contravened the provisions of section 25(g) of the Code and Regulation 27 of the CIRP Regulations. At the same time, the committee took note of the fact that the CIRP was required to close on 27- 02-2018 but the appointment of the IP was confirmed on 16-01-2018 only after the lapse of 140 days. Thus, IP was required to complete the CIRP in remaining 40 days. Further, the CoC comprising of the sole operational creditor did not seek extension of the CIRP period this makes the task more challenging for IP.</p>	<p>Penalty: The Disciplinary Committee, in exercise of the powers conferred under Regulation 24(1) (c) of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(B) of the Disciplinary Policy of IIIPI, issued a warning and advise IP to exercise due caution and be more careful while handling any assignments.</p>
Order No. IIIPI/DC/04/2018-19 dated 17 <sup>th</sup> December 2019	<p>Committee noted that there is a contravention of clause 24 of the Code of Conduct. Use of the name of IBBI, including in a LLP, is misleading as this is bound to give a wrong impression to the stakeholders and to the general public at large that LLP has been incorporated by the IBBI or it is associated with the IBBI, in any manner. Further, on perusal of the Form 1 i.e. application for reservation or change in name, submitted by Respondent to RoC, it is noted that at point 14 of the said form respondent has mentioned the word IBBI is the short abbreviation of his wife, daughter, himself and sister (indu, baby, bablu and Irin) which are more of nick name rather than legally recognized name which even can't be considered to form an abbreviation of "IBBI".</p> <p>The Disciplinary Committee took note of the fact that the LLP under reference has since been dissolved w.e.f 15-05-2019.</p>	<p>Penalty: The Disciplinary Committee, accordingly, in exercise of the powers conferred under Regulation 24(1) (c) of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(B) was of the view that the matter did not warrant further enhanced penalty and issues a 'reprimand' to him and counseled IP to desist from any action in future that would bring disrepute to the profession.</p>

			The Committee further noted that respondent did not handle any assignment under the name of said LLP. Moreover, IBBI vide its order dated 06-09-2018 had directed respondent not to take any new assignments till the dissolution of the said LLP which was complied with by him, apart from suspending his registration as an Insolvency Professional for 3 months.	
Order No. ICSI IIP/DC/07/2019 dated 21 <sup>st</sup> November 2019			Complain against IP was regarding refusal to accept the claim of the complainant and not providing the complainant with Resolution Plan as they were related party of the CD. It was found that the claim was accepted and IP is not in contravention of provisions of the Code.	No Penalty.
Order No. ICSI IIP/DC/06/2019 dated 21 <sup>st</sup> November 2019			The Disciplinary Committee observed that IP failed to circulate the minutes of the meeting to all participants by electronic means within forty eight hours of the said meeting. The Disciplinary Committee observed that IP was appointed as Interim Resolution Professional on 17 <sup>th</sup> November, 2017 and thereafter appointed as Resolution Professional by the Committee of Creditors but in compliance with Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, failed to appoint registered valuers within seven days of his appointment.	Penalty: A monetary penalty of INR 10,000 (Rupees Ten thousand only) on IP and shall undergo the pre-registration educational course specified under regulation 5(b) of the Insolvency and Bankruptcy Board of India (Insolvency professionals) Regulations, 2016 from ICSI Institute of Insolvency Professionals to improve his understanding of the Code, and regulations made thereunder, before accepting any assignment under the Insolvency and Bankruptcy Code.
Order No. ICSI IIP/DC/09/2019 dated 23 <sup>rd</sup> September 2019			The Disciplinary Committee observed that the contraventions such as not holding the first COC meeting in time and calculation of actual vote share percentage while preparing the list of creditors was unintentional.	Penalty: IP shall undergo the pre-registration educational course specified under regulation 5(b) of the Insolvency and Bankruptcy Board of India (Insolvency professionals) Regulations, 2016 from ICSI Institute of Insolvency Professionals to improve his understanding of the Code, and regulations made thereunder, before accepting any assignment under the Insolvency and Bankruptcy Code.
Order No. ICSI IIP/DC/05/2019 dated 11 <sup>th</sup>			IBBI had issued an order against the IP for charging exorbitant fees and taking up too many assignments whereby IBBI had	Penalty: ICSI IIP in consonance with the order expelled the professional

March 2019	cancelled their registration and barred them from taking any new assignment for ten years.	membership of the IP and debarred them from seeking fresh registration for ten years.
Order No. ICSI IIP/DC/06/2019 dated 11 <sup>th</sup> March 2019	The IP was in contravention of Section 208 of the Code whereby they had shown high degree of lack of seriousness and been a habitual offender of being non compliant with the Code. The IP has not filed disclosures over a year even after constant reminders.	Penalty: the IP was suspended for 30 days from their membership wherein they could not take up any fresh assignments. The IP was to file a detailed reply explaining the reasons of non-compliance. A monetary penalty of Rs. 50,000 was also imposed.
Order No. ICSI IIP/DC/04/2018 dated 26 <sup>th</sup> February 2019	IBBI had issued an order against the IP whereby IBBI had cancelled their registration and barred them from taking any new assignment for ten years.	Penalty: ICSI IIP in consonance with the order expelled the professional membership of the IP and debarred them from seeking fresh registration for ten years.
Order No. ICSI IIP/DC/02/2018 dated 3 <sup>rd</sup> October 2018	The fee contracted by the IP was exorbitant and by no standards a reasonable reflection of the work to be undertaken by her. The DC finds that IP had violated the provisions of Clauses 10, 24, 25 and 27 of the Code of Conduct for Insolvency Professionals under the First Schedule of the Regulations and Section 20 of the Code.	Penalty: ICSI IIP suspended the registration of the IP till the period that IBBI had also suspended their membership (till May 2019)
Order No. ICSI IIP/DC/01/2018 dated 28 <sup>th</sup> August 2018	The main issues of the complaint were placed before NCLT and appear to have already been adjudicated by NCLT and there is nothing on record in the said NCLT order dated 2nd August, 2017 against the Resolution Professional.	Penalty: DC held that it would be impermissible for a quasi-judicial proceeding to permit reargitation of the same issues on which a judicial forum i.e. Ld. NCLT, Hyderabad Bench has already pronounced an order.
The Report of the Bankruptcy Law Reforms Committee (BLRC) (November 2015)	<i>“the Committee believes that a new model of <b>“regulated self regulation”</b> 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</i>	Link for full report: <a href="https://ibbi.gov.in/BLRCReportVol1_04112015.pdf">https://ibbi.gov.in/BLRCReportVol1_04112015.pdf</a>

	<p><i>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></p>	
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**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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