



IBC KNOWLEDGE CAPSULE

Framework for “Valuers and other Professionals under IBC”

Introduction:

An Insolvency Professional requires the assistance and help from various different professionals such as valuers, advocates, financial advisors etc throughout the insolvency process for conducting smooth CIRP.

A valuer is a professional who helps to determine the current market value of property, land, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provisions of Companies Act and under the provisions of IBC, 2016. MCA vide notification¹ dated 23rd October, 2017 has delegated the powers and functions vested in it under section 247 of the Companies Act, 2013 to the Insolvency and Bankruptcy Board of India (IBBI) as the authority to regulate and administer the Registered Valuers. Also, every valuation required under the Code or any of the regulations made thereunder is required to be conducted by a ‘registered valuer’, that is, a valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017².

To become Registered Valuer, it is mandatory to become member of a Registered Valuer Organisation as per the Companies (Registered Valuers and Valuation) Rules and to get registered with IBBI.

The available framework with important provisions under the Code and orders passed are summarized in the color coded table below:

¹ http://www.mca.gov.in/Ministry/pdf/delegationOfPowers_Section247_24102017.pdf

² https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/17th%20October,%202018%20Circular%20-%20Valuation%20under%20the%20Insolvency%20and%20Bankruptcy%20Code,%202016_2018-10-17%2012:38:49.pdf

Provisions of the Code	
Rules/Regulations under the Code	
Orders passed by NCLT/NCLAT/Supreme Court	
Circulars/Notifications/Reports	

TABLE: “Valuers and other professionals” under IBC

Source	Details /Excerpts	Explanation
Section 20(2) of the Code	<i>(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority- (a) to appoint accountants, legal or other professionals as may be necessary;</i>	It is one of the duties of an IRP to appoint any professionals that they may deem necessary.
Section 25(2) of the Code	<i>(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: - ...(d) appoint accountants, legal or other professionals in the manner as specified by Board;</i>	It is the duty of an RP to appoint any professionals that they may deem necessary for completion of CIRP.
Section 59(3)(b)(ii) of the Code	<i>59. Voluntary liquidation of corporate persons. - (3) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely: - (b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely: - (ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;</i>	Where a proposal for Voluntary winding up has been made by a Company, the Declaration of Insolvency given by Directors shall be accompanied with the Valuation report issued by Registered Valuer.
Section 46(2) of the code	<i>46. Relevant period for avoidable transactions (2) The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions mentioned in this section.</i>	In an application for avoiding a transaction at undervalue, The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions.
Regulation 2(1)(m) of IBBI	<i>“registered valuer” means a person registered as such in</i>	A registered valuer under IBC has the same

(CIRP) Regulations, 2016	<i>accordance with the Companies Act, 2013 (18 of 2013) and rules made thereunder;</i>	meaning as provided under the Companies Act, 2013.
Regulation 27 of IBBI (CIRP) Regulations, 2016	<i>The resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date], appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation : Provided that the following persons shall not be appointed as registered valuers, namely: (a) a relative of the resolution professional; (b) a related party of the corporate debtor; (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or (d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.</i>	Two Registered Valuers are mandatorily required to be appointed under IBC for determining the fair value and liquidation value of corporate debtor.
Regulation 35 of IBBI (CIRP) Regulations, 2016	<i>(1) Fair value and liquidation value shall be determined in the following manner:- (a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor; (b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and... ... The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value</i>	The scope of work for a registered valuer is as provided in this Regulation.
Regulation 35 of IBBI (Liquidation) Regulations, 2016	<i>(2) [In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days] of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor: Provided that the following persons shall not be appointed as registered valuers,</i>	In the process of liquidation, a liquidator is authorized to appoint two registered valuers for determining realizable value of assets of the corporate debtor within 7 days of liquidation commencement date.

	<i>namely: - (a) a relative of the liquidator; (b) a related party of the corporate debtor; (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or (d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.</i>	
The Companies (Registered Valuers and Valuation) Rules, 2017	In exercise of the powers conferred by section 247 read with sections 458, 459 and 469 of the Companies Act, 2013 (18 of 2013), the Central Government made rules for Registered Valuers thereunder. It enumerates the qualification, registration and disqualification criteria for such valuers.	These rules apply for registered valuers and valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities.
Circular No. RVO/12/2018 dated 30th May 2018	<i>Accordingly, recognised RVOs are advised to admit only those individuals, who possess the necessary educational qualifications and experience and meet other eligibility requirements, as valuer members. They are also advised to recommend only those valuer members, who have completed the recognised educational course and passed valuation examination of the relevant asset class, to the Authority for registration.</i>	The Circular discussed the eligibility and registration requirements for Valuers needed for insolvency cases.
Advisory No. IBBI/RVO/032/2020 dated 20th March, 2020	<i>In its last review notified on 14th January, 2019, effective for Examinations from 1st April, 2019, it has been specified that the educational courses shall be delivered by an RVO in not less than 50 hours in classroom mode.</i>	This Advisory noted the CPE requirements of valuers will be completed through online mode due to COVID-19 situation.
Circular No. IBBI/RVO/033/2020 23rd April, 2020	<i>Keeping their powers and responsibilities in view, the Rules have prescribed minimum norms of governance befitting a regulatory State. The Rules, inter alia, prescribe the composition of Governing Board of an RVO, and manner of discharge of its powers and functions.</i>	The Circular clarified a condition regarding composition of governing board of an RVO as per the Rules. The same was advised to be followed by the RVOs.
The report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design, November 2015	<i>In India today, there are professionals and intermediaries that offer services to resolve financial distress of both registered entities as well as individuals. These include lawyers, accountants and auditors, valuers and specialist resolution managers. However, given the critical role that the Code envisages for these entities in the resolution process, the Committee believes that the Board should set minimum standards for the selection of these professionals, along with their licensing, appointment,</i>	The BLRC report envisaged that specific and separate rules and eligibility criteria etc. will need to be mentioned and specified under the Code. Congruently, rules were specifically prescribed for valuers.

	<i>functioning and conduct under the Code.</i>	
<i>Evershine Advisory Private Limited Vs. Optic Advisory Private Limited</i> M.A. No. 1452 of 2019 in CP(IB)-442/IB/MB/2018 dated 03.06.2019	An application u/s 7 of IBC was filed by Evershine Advisory Services Pvt. Ltd (Financial Creditor) initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely Optic Advisory Pvt. Ltd. Hon'ble NCLT via order dated 16.10.2018 admitted the application for initiation of CIRP against the Corporate Debtor.	NCLT, Mumbai Bench held that waiver from appointment of Valuers can be granted if the assets of the Corporate Debtor are of negligible value.
<i>Cushman and Wakefield India Private Limited Vs. Union of India</i> W.P.(C) 9883/2018, CM No. 38508/2018 dated 31.01.2019	<i>"The objective and intention behind laying down the impugned Rule is clearly to introduce higher standards of professionalism in valuation industry, specifically in relation to valuations undertaken for the purpose of Companies Act and IBC, 2016. The impugned Rule obviates the possibility of conflict of interest on account of diverging interests of constituent / associate entities which resultantly shall undermine the very process of valuation, being one of the most essential elements of the proceedings before NCLT".</i>	In a bunch of 4 writ petitions filed before Hon'ble Delhi High Court, the vires of Rule 3(2) of Companies (Registered Valuers and Valuation) Rules, 2017 were challenged as unconstitutional for being violative of Article 14, Article 19(g) and Article 301 of the Constitution of India. The chief contention raised was that the rule does not satisfy the criteria of "reasonable classification" and that there is no "intelligible differentia" to distinguish the class of a company, other than a subsidiary company, joint venture or associate of other company. The justification provided for the said rule by the Union of India, which also found favor with the court, was, however, that since the subsidiaries, joint subsidiaries, joint ventures and associates cannot be said to be completely independent of the parent company. If a Registered Valuer company is a subsidiary, joint venture or associate of another company, the said entity may not be able to stand out as an independent professional body.

Note:

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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