

KNOWLEDGE REPONERE

(A WEEKLY BULLETIN)
(13-17 MARCH, 2017)



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Published by:



1st Floor, ICSI House, 22, Institutional Area, Lodi Road
New Delhi-110003

Phones: 011-4534 1099

Email: info@icsiipa.com

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(A Weekly Bulletin: 13-17 March, 2017)

“Knowledge is of no value unless you put it into practice. – Anton Chekhov”

Dear Professional Colleagues,

As we are aware, the Insolvency and Bankruptcy Code, 2016 is built on institutional pillars namely Insolvency Professionals, Insolvency Professionals Agency, Information Utility, Adjudicating Authorities (NCLT, NCLAT, DRT, DRAT) and Insolvency and Bankruptcy Board of India. Insolvency Professionals play a crucial role throughout the Corporate Insolvency Resolution Process (CIRP). Reported statistics on pending cases, Non Performing Assets (NPAs) and stressed assets in the Indian Banking System indicate enlarged scope for Insolvency Professionals under the Code.

The Code has tremendous potential that could help our Indian economy to overcome this issue of NPAs and to provide a free and easy flow of credits in Indian markets. In fact, the registered Insolvency Professionals have started taking up cases as Interim Resolution Professionals. CIRP starts with the admission of application by National Company Law Tribunal and appointment of Interim Resolution Professional. The Interim Resolution Professional has to perform a number of tasks including taking over of management of debtor, public announcement, invitation, collation and verification of claims, preparation of list of creditors, reporting to Adjudicating Authorities, calling of the first meeting of the Committee of Creditors, preparation of information memorandum and so on.

In this issue, we have briefly analysed the procedure for initiation of corporate insolvency resolution process and also covered the weekly case updates and the developments at ICSI IPA.

1) Knowledge Update

The new Insolvency law is expected to attain positive effect on the economy as a whole by prescribing time bound recovery of the business of debtor as well as dues to the creditors.

Chapter II (Section 6 to 32) of the Code deals with the **Corporate Insolvency Resolution Process**. Provisions of the Code provide that the Insolvency Process can be initiated by *Financial Creditor (Section 7)*, *Operational Creditor (Section 8 & 9)* and *Corporate Debtor (Section 10)*.

The step by step procedure for initiating the Corporate Insolvency Resolution Process (CIRP) under the provisions of the Code is given below through a flowchart:

CIRP can be initiated where the minimum amount of default is atleast Rs. 1 Lakhs

In case of Operational Creditors only, prior to making application to the National Company Law Tribunal (NCLT), atleast 10 days demand notice or invoice demanding the payment has to be served to the Corporate Debtor. If within the 10 days from the date of delivering of demand notice; no payment or notice of dispute is received from Corporate Debtor then the Operational Creditor can move to NCLT.

Application to NCLT

NCLT shall within 14 days of receipt of application, by order

Admit the application if it is complete

Reject the application if it is incomplete

The Insolvency Process will start from the date of admission of the application by the NCLT. Date of admission of the application is called "Insolvency Commencement Date".

NCLT shall before rejecting an application would give a notice to the applicant to rectify the defects within 7 days of receipt of such notice.

The Insolvency Process shall be completed within a period of 180 days from the Insolvency commencement date. A single extension of 90 days can also be granted by NCLT if a resolution in respect of extension has been approved by atleast 75% of the voting shares of the Committee of Creditors.

Declaration by NCLT

The moratorium period will be active for the period for which the insolvency resolution process is active.

Appointment of Interim Resolution Professional within 14 days from the insolvency commencement date; for a period of 30 days.

Making Public Announcement

After appointment, Interim Resolution Professional will be vested with the management of the affairs of the corporate debtor and also a Committee of Creditors will be constituted which will comprise of only financial creditors of the corporate debtor.

First meeting of Committee of Creditors within 7 days of its constitution

Resolve to appoint Interim Resolution Professional as Resolution Professional.

OR

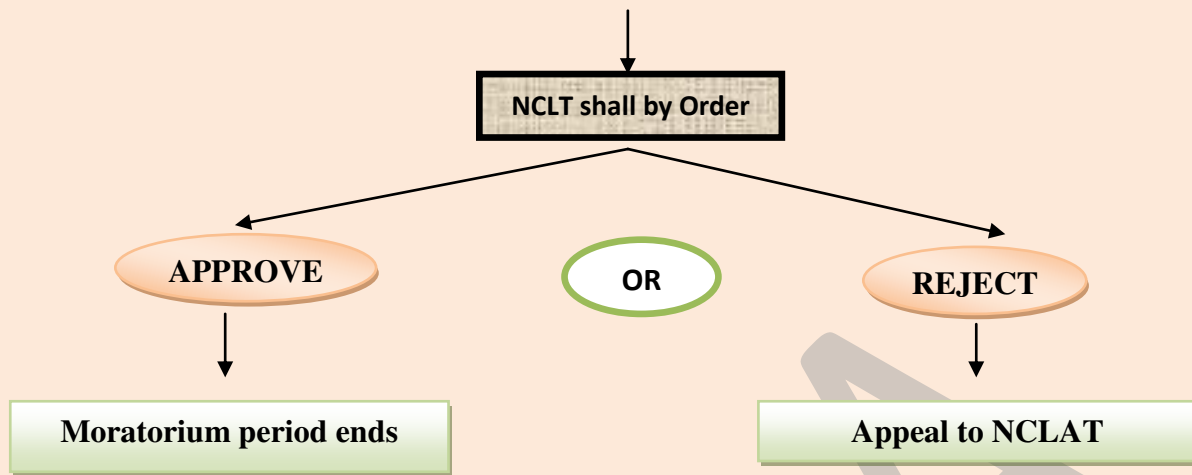
Replace the Interim Resolution Professional by another Resolution Professional.

All decisions of the Committee of Creditors shall be taken by a vote of atleast 75% of the voting shares.

Preparation of Information Memorandum and Resolution Plan

Approval of Resolution Plan by the Committee of Creditors.

Submission of Resolution plan to NCLT.



2) Case Updates

As on date 15 cases have been admitted under the Insolvency and Bankruptcy Code, 2016. In our previous weekly update we provided the details of the 11 cases which were admitted and also the brief details on the rejected cases. The details of 4 cases admitted subsequently are tabulated below:

S. No.	Case Title	Relevant Section	NCLT Bench	Amount in default mentioned in application (in Rupees)
1.	M/s. Tomorrow Sales Agency Pvt Ltd V/s. M/s. Raipur Power and Steel Ltd. & Ors.	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Principal Bench, New Delhi	17.37 Crores
2.	Surendra Kumar Joshi V/s. REI Agro Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Kolkata	1.2 Lakhs
3.	M/s. VNR Infra Metal Private Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Hyderabad	Order not available on the site.
4.	Hind Motors Mohali Pvt. Ltd.	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Chandigarh	3 Crores

3) Interactive Meeting on Draft Regulations on Voluntary Liquidation

IBBI came out with **Draft Regulations on Voluntary Liquidation of Corporate Persons** inviting public comments. In respect of the same, ICSI IPA organized an Interactive Meet jointly with ASSOCHAM on 28th February, 2017 which was chaired by Dr. M. S. Sahoo, Chairperson of the IBBI. Professional experts from legal, financial and banking sector were part of the meet and inputs were solicited from all of them on the issues pertaining to the draft regulations.

4) Interface with Insolvency Professionals

We interacted with our registered professional members who have been appointed as Interim Resolution Professionals by the orders of NCLT. These insolvency professionals who have been appointed as Interim Resolution Professionals have started realizing the dynamism and challenges involved in the corporate insolvency resolution process, including matters relating to:

- taking over management;
- verification of claims as the number of creditors may be large;
- parameters to be taken in consideration while ascertaining the professional fees;
- meeting the timelines and completing the task of calling creditors committee meeting within 30 days;
- valuation aspects;
- Cooperation from the staff.

In the light of the issues being faced by the Interim Resolution Professionals, ICSI IPA organized an **Interface on Opportunities & Challenges for Insolvency Professionals under the Insolvency and Bankruptcy Code, 2016** in association with PHD Chamber of Commerce and Industry on March 7, 2017 at P H D House, New Delhi. **Honourable Justice Shri S J Mukhopadhyaya, Chairperson of NCLAT** was the Chief Guest at the Interface and **Dr. M. S. Sahoo, Chairperson of Insolvency and Bankruptcy Board of India** was the Guest of Honor at the Interface.

This Interactive Program was attended by large numbers of Insolvency Professionals who put forward their concerns and also shared their experience while working under the Code. There was a Panel Discussion where **Mrs. Suman Saxena, Whole Time Member of IBBI** was the Chairperson of the panel which included eminent professional experts from the insolvency field and the banking sector.

We request all the Insolvency Professionals to intimate us the challenges and issues that they are facing under the Code. We will consider the same and take them further to the Insolvency and

Bankruptcy Board of India (IBBI) for further consideration. Professional Members are requested to mail their issues, concerns and challenges under the Code at alka.kapoor@icsi.edu.

5) **New Publication**

ICSI IPA came out with its second publication on the Cod: “**Interim Resolution Professional-A Handbook**”. The publication attempts to analysis the compliance obligations of interim resolution professionals along with the specimen applications, letters to National Company Law Tribunal (NCLT), Regulators and Stakeholders as applicable. It broadly covers the provisions related to appointment of interim resolution professional, public announcement and regulatory intimations, claims and constitution of committee of creditors, conduct of insolvency process as an interim resolution professional, conduct of first meeting of committee of creditors and challenges for Insolvency Professionals.

This publication is available for purchase from the ICSI Headquarters and can also be obtained through post by sending a requisition along with a demand draft of Rs.230/- per book (postage included) in favour of the “**ICSI Insolvency Professionals Agency**”, mentioning your name and complete postal address. The requisition has to be made at the following address:

Rita Aswani, Deputy Director, Stores Department, The Institute of Company Secretaries of India C-37, Sector-62, Noida-201309, 0120-4522016.

6) **Proposed Programmes**

ICSI IPA is under the process of conducting a series of webinars on various topics under the Insolvency and Bankruptcy Code, 2016 in the coming months. If you have any topic which you consider should be discussed in the upcoming webinars, you can mail us the same at alka.kapoor@icsi.edu.

7) **Reporting Requirements by an Insolvency Professional**

Every Insolvency professional consequent to his appointment has to comply with the following requirements of the Code and Regulations made thereunder:

- As per the **Section 208(2) (d) of the Code**, every Insolvency Professional shall submit a copy of the records of every proceeding before the Adjudicating Authority to the Insolvency and Bankruptcy Board of India as well as to the Insolvency Professional Agency of which he is a member.
- Further, **Regulation 16 of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations**,

2016 deals with monitoring of members. As per the said Regulation, a professional member shall submit information, including records of ongoing and concluded engagements as an insolvency professional to the Insolvency Professional Agency atleast twice a year.

I appeal to all the professional members to make themselves eligible to become Insolvency Professionals by passing the Limited Insolvency Examination, enrol with ICSI IPA and register with IBBI to make use of ensuing opportunities and to expand their professional horizon.

Wish you good luck in all your endeavors!!

CS ALKA KAPOOR
CHIEF EXECUTIVE OFFICER
(Designate)
ICSI Insolvency Professionals Agency
Tel: 011-45341099