



## INSOLVENCY PROFESSIONAL AGENCIES: FRONT-LINE REGULATORS UNDER IBC

**Dr. Binoy J. Kattadiyil**  
ICSI IIP, IPA of IBBI, New Delhi

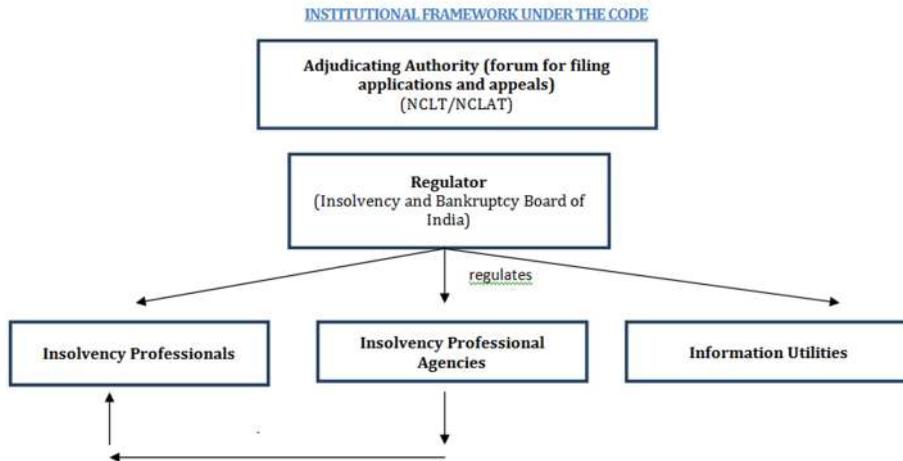
**CS Nitika Manchanda**  
ICSI IIP, IPA of IBBI, New Delhi

*“Law is the wisdom of the ages wrapped in the opinion of the moment”*

The legal system of a country at a given time is not the creation of one man or of one day; it represents the cumulative fruit of the endeavour, experience, thoughtful planning and patient labour of a large number of people through generations. The roots of country's law and legal institutions lie deeply buried in the past. The truth is that the traditions of the past have made our modern legal system what it is, and still live on in it. The Law of Insolvency and Bankruptcy is not an exception to this school of thought. The concept of payment and recovery of debts was a traditional practice existed in Ancient India also. The insolvency laws are evolved since several decades, resulting in a consolidated insolvency regime named **“Insolvency and Bankruptcy Code, 2016”**. After several rounds of teething troubles the law is still evolving, taking into the spirit of best practices from precedents and global legislations.

The entire structure of Insolvency resolution lies on following 4 pillars:

- ✚ **INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**
- ✚ **THE BANKRUPTCY AND INSOLVENCY ADJUDICATOR**  
(Adjudicating Authorities, Appellate Tribunals, Supreme Court etc.)
- ✚ **BANKRUPTCY AND INSOLVENCY INFORMATION UTILITIES**
- ✚ **INSOLVENCY PROFESSIONALS (IPS) & INSOLVENCY PROFESSIONAL AGENCIES (IPAs)**



### INSOLVENCY PROFESSIONAL AGENCIES: ROLE & FUNCTIONS

**Insolvency Professional Agencies (IPAs)** are the entities that have been incorporated as **not for profit companies** to enrol, educate, monitor, regulate and guide the insolvency professionals. They are considered as **front line regulators** under the insolvency regime in India.

As per **Section 3(20)** of the Insolvency and Bankruptcy Code, 2016, **“Insolvency Professional Agency”** means any person registered with the Board under Section 201 as an insolvency professional agency.

Three IPAs are registered under the Insolvency & Bankruptcy Code of India at present i.e. (i) **ICSI Institute of Insolvency Professionals** (ii) **Indian Institute of Insolvency Professionals of ICAI** (iii) **Insolvency Professional Agency of Institute of Cost Accountants of India.**

The broad functions of IPAs are (i) **Regulatory functions**:drafting detailed standards and codes of conduct through bye-laws, that are made public and are binding on all members; (ii) **Executive functions** - monitoring, inspecting and investigating members on a regular basis, and gathering information on their performance, with the over arching objective of preventing frivolous behaviour and malfeasance in the conduct of IP duties; (iii) **Quasi-judicial functions** - addressing grievances of aggrieved parties, hearing complaints against members and taking suitable actions. Through these three types of functions, a clear and well-defined statutory framework enabling the IP agencies to enforce their rules on all members has been established.

More precisely, the Governing Board (Board of Directors) of the IPA constitute various committees which are responsible for carrying out the following functions:

(i) **Granting membership to individuals as Professional Members:** The IPAs grant membership to individuals who fulfil all the requirements set out in



the bye laws on payment of membership fee. On obtaining the professional membership by the IPA, the insolvency professional is required to complete 50 hrs pre-registration educational course (PREC) organised by the IPAs. On successful completion of PREC the professional member is required to get registered with the IBBI on payment of registration fee.

(ii) **Monitoring of Members:** The IPA monitors the professional activities and conduct of professional members for their adherence to the provisions of the Code, rules, regulations and guidelines, code of conduct and directions given by the Governing Board. It reviews the information and records submitted by the professional members. The policy assures that the privacy of members and further provides confidentiality of the information received from the IPs. The monitoring of members includes by way of inspection also.

(iii) **Redressal of Grievances:** The IPA redresses the complaints/grievances against the IP. In order to ensure the timely and systemic disposal of grievances, the grievance redressal policy of the Grievance Redressal Committee provides proper procedure, manner and formats for receiving, processing, redressing and disclosing grievances against IPA or any member.

(iv) **Disciplinary action against members:**The agency may initiate disciplinary proceedings by issuing show cause notice against insolvency professionals.All the Insolvency professional agencies handle the disciplinary matters through its disciplinary policy and disciplinary committee.

(v) **Professional Development:**One of the most important functions of an IPA is to develop the professional and to develop, educate and train the Insolvency Professionals who are the real backbone of this insolvency regime.The IPAs have also been entrusted with the function of providing Continuous Professional Education and development of the profession of insolvency professionals for which they take up different initiatives such as organising seminars, webinars, conferences, workshops, Pre-Registration Training Course, publications and other knowledge enhancement initiatives.

**Major sources of revenue for the IPAs in India are enrolment & membership fees, fees from training programmes/seminars/workshops etc, sale of publications etc.**



## International Perspective

The design of insolvency regimes varies significantly across countries. The major economies of the world have all regimes to deal with the economic necessities posed by insolvencies on a domestic, and increasingly often an international scale. Many maturing economies are taking on board the need to craft new procedures to deal with novel problems. All these regimes are in constant re-examination as the practice reveals deficiencies or success stories.

It is a world known fact that the insolvency law globally is much more settled as the consolidated insolvency regime in India is only 3-4 years old and unremitting changes are being made to make it more robust. Still, India is one of those countries whose Insolvency regime is being talked in the world in the short span because of its persistence.

Let's talk about the regulating bodies of insolvency regime in other countries especially similar to Insolvency professional Agencies (IPAs) in India to understand their functionality.

## United Kingdom

The primary legislation governing insolvency is the Insolvency Act 1986. The regulatory bodies under this structure are:

- (i) **Secretary of State for Business, Innovation and Skills:** which has the overall responsibilities for insolvency policy in Great Britain (England, Wales and Scotland)
- (ii) **Insolvency Service:** is responsible for overseeing the insolvency regime on the Secretary of State's behalf.
- (iii) **Recognized Professional Bodies (RPBs):** the Secretary of State recognises certain independent professional bodies, called recognised professional bodies or RPBs, for the purposes of authorising their members to act as insolvency practitioners. The Insolvency Service regulates the RPBs to ensure that the members they authorise are fit to act as insolvency practitioners. The RPBs are independent bodies that make their own membership rules and regulations, but they are required to have in place rules to ensure their insolvency practitioners meet acceptable requirements as to education, practical training and experience. The commitments made by the RPBs are set down in a "Memorandum of Understanding", which records the agreement between the RPBs and the Secretary of State.

In view of that, India and UK has some similarities in the regulation structure and IPAs & RPBs working is quite akin in nature.

**Major sources of revenue for the RPBs in UK are through membership fees and annual fees from various kinds of memberships like insolvency practitioners, students, firms, companies, affiliates etc, fee for conducting**



**insolvency examination, specialized certified courses in various domains of insolvency, through various events and workshops, sale of publications, e-learning platform.**

### **Australia**

The primary legislation governing insolvency is Corporations Act 2001. The regulatory bodies under this structure are: (i) **Australian Securities and Investments Commission** (ASIC is an independent Government body responsible for administering and enforcing the Corporations Act 2001 which governs the responsibilities of Australian companies) (ii) Professional members such as **Australian Restructuring Insolvency and Turnaround Association** (ARITA) which regulates the professional membership body to ensure that the members they authorize are fit to act as insolvency practitioners. **Major sources of revenue for the professional bodies in Australia are through membership & training, Event Management, Advertising and marketing, Sale of Precedents, Sponsorship etc.**

### **United States of America**

In the USA, there are Chapter 7, 11 and 13 which are the equivalent to Insolvency Professionals and liquidators under Insolvency and Bankruptcy Code in India. Chapter 7 trustees oversee the liquidation/bankruptcy and Chapter 11 trustees overlook reorganisation plan. With regard to the regulatory bodies, US bankruptcy proceedings are overseen by US Trustee Program under the department of Justice. Under the US Trustee program, Attorney general appoints an official US Trustee for each district who allots different cases to trustees in that district.

There is no concept like Insolvency Professional Agencies (IPAs) in US. All the trustees are monitored by the official US Trustee.

**The US Trustee Program is a government funded body as it falls under the department of justice. Further, the program is funded by the United States Trustee System Fund which consists primarily of fees paid by parties and businesses invoking bankruptcy protection. Since it is completely under the control of Government, there is no revenue model. The major sources of funds are either from the Government or from the debtor's invoking bankruptcy.**



## **Road Ahead**

Considering the non-profit nature of IPAs and the increasing number of functions and responsibility envisaged under the Code, financial viability and sustainability in the long run is mandatory. There are 3 IPAs in Indiaas compared to much higher number in other jurisdictions. Since the law is only 3 years' old, IPAs are working rigorously to come at par with developed professional bodies across the globe. To augment the sustainability in the long run, IPAs are proactively taking initiatives for its professional members and for developing the law of Insolvency to mark a place in world of insolvency.