



ROLE OF INSOLVENCY PROFESSIONALS UNDER INDIAN INSOLVENCY REGIME

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Introduction

The enactment of Insolvency and Bankruptcy Code 2016 (“IBC”) brought in with itself the profession and regime of the Insolvency Professionals. Today, there are more than 2500 Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (“IBBI”). The insolvency representatives play a central role in the effective and implementation of an insolvency law, with certain powers over debtors and their assets and a duty to protect those assets as well as the interests of creditors and employees, and to ensure that the law is applied impartially. These Insolvency Professionals wear many hats as per their functions during resolution and liquidation process. During the resolution process they act as Interim Resolution Professional (IRP) and Resolution Professional (RP) and during the process of Liquidation they act as the liquidator.

As per Section 3(19) of the IBC Code an “insolvency professional” means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207.

Interim resolution professionals are usually appointed with the admission of an application to initiate the Corporate insolvency resolution process (“CIRP”) in respect of a company under the IBC. The interim resolution professional undertakes the management of the company during the period between the commencement of the CIRP and the appointment of a full-time resolution professional by the Committee of Creditors (CoC).

Resolution Professional has a wider role as he becomes the manager of the negotiation between the debtor and the creditors in assessing the viability of the entity. The appointment of a resolution professional is approved by the CoC in its first meeting (by way of a majority vote of not less than 66% by value), approximately 30 days from the date of the commencement of the CIRP or soon thereafter. Resolution Professional has the responsibility of managing all information so that the debtors and creditors are equally informed about the business. A resolution professional may, with his/her consent, be re-appointed by the NCLT as the liquidator of the corporate debtor if the company enters liquidation.



Role defined in the Insolvency Code and Regulations¹

Insolvency professionals are governed under specific regulations issued by the IBBI along with a comprehensive code of conduct, which mandates the highest standard of care and integrity and prohibits any conflict of interest. Insolvency and Bankruptcy Code and Regulations has a well-defined structure of roles and duties to be performed by the Resolution Professional in the Corporate Insolvency Resolution Process (CIRP). Following are the duties of Resolution Professionals as per the Code and CIRP Regulations:

S.No.	Relevant Section and Regulation	Description
1.	Sec 13(2) & 15 and Reg 6(1)& 6(2)	Making public announcement within 3 days of appointment and calling for submission of claims.
2.	Sec 17	Management of affairs of the Corporate Debtor (CD), exercise the powers of the Board of Directors of the CD, etc.
3.	Sec 17(2)(e)	Compliance with the requirements under any law on behalf of the CD during CIRP
4.	Sec 18(1)(a)	Collecting all information relating to the assets, liabilities, finances and operations of the CD
5.	Sec 18(1)(b) and Reg 13 & 14	Receiving, collating and verifying claims
6.	Sec 18(1)(d) & (f)	Monitoring of the assets of CD, manage its operations, take control and custody of its assets
7.	Sec 21(6A) & (b) and Reg 4A & 16A	Ascertaining class(es) of creditors, identifying and selecting AR, applying to AA for appointment of AR, provide list of such creditors to AR, provide electronic means of communication between AR and such creditors
8.	Sec 17(2)(e)	Compliance with the requirements under any law on behalf of the CD during CIRP
9.	Sec 18(1)(a)	Collecting all information relating to the assets, liabilities, finances and operations of the CD
10.	Sec 18(1)(b) and Reg 13 & 14	Receiving, collating and verifying claims
11.	Sec 18(1)(d) & (f)	Monitoring of the assets of CD, manage its operations, take control and custody of its assets
12.	Sec 18(1)(c) & 21(1) and Reg 17(1)	Constitution of CoC and filing report with the Adjudicating Authority (AA)
13.	Sec 22(1) and Reg 17(2)	Holding the first meeting of the CoC within seven days of filing report
14.	Sec 24 & 25(2)(f) and Reg 23 to 26	Convene, attend and conduct of meetings of CoC, including participation through video conferencing and voting through electronic means

¹<https://ibbi.gov.in/uploads/legalframework/547c9c2af074c90ac5919fa8a5c60bd4.pdf>
<https://ibbi.gov.in/uploads/legalframework/1e972e1431d061f08472e2b3ef3fb32d.pdf>



15.	Sec 18(1)(e)	Filing of information with information utility
16.	Sec 19(2)	Make application to the AA in case of non-cooperation from CD
17.	Sec 20(1) & 20(2)(e)	Protect and preserve the value of property of the CD and manage its operations as a going concern
18.	Sec 20(2)(a) & 25(2)(d)	Appointing accountants, legal or other professionals, as may be necessary
19.	Sec 20(2)(b)	Enter into contracts on behalf of CD or amend contracts entered into before commencement of CIRP
20.	Sec 20(2)(c)	Raise interim finance (within the limits set by CoC)
21.	Sec 20(2)(d)	Issue instruction to personnel of the CD for keeping it as a going concern
22.	Sec 21(10)	Make financial information available to CoC within seven days of such requisition under section 21(9)
23.	Sec 12A and Reg 30A	Filing of withdrawal application before the AA
24.	Sec 18(1)(g) and Reg 34A r/w IBBI Circular dated 12-06-2018 ²	Disclosure of insolvency resolution process costs
25.	Sec 23(1)	Conducting of the CIRP in compliance with the procedure under the Code and Regulations
26.	Sec 25(1)	Preserve and protect the assets of the CD including continued business operations of CD
27.	Sec 25(2)(a)	Take control and custody of all assets of CD
28.	Sec 25(2)(a)	Represent and act on behalf of the CD with third parties, exercise rights for the benefit of CD in judicial, quasi-judicial and arbitration proceedings
29.	Sec 25(2)(g) & 29(1) and Reg 36(1)	Preparation and circulation of Information Memorandum (IM) to CoC
30.	Sec 240(1) and Reg 36(3)	Providing information having a bearing on the Resolution Plan, upon request from a member of the CoC
31.	Sec 29(2) and Reg 36(4)	Obtaining confidentiality undertaking from prospective Resolution Applicants(RA)s and CoC
32.	Sec 25(2)(h) and Reg	Publishing of invitation for EOI from prospective RAs

²[https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20\[June%202018\]_2018-06-18%2014:05:28.pdf](https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Jun/Circular%20on%20Fee%20and%20other%20Expenses%20incurred%20for%20CIRP%20[June%202018]_2018-06-18%2014:05:28.pdf)



	36A(1) to (3)	
33.	Sec 25(2)(k) and Reg 36A(10)	Issue provisional list of eligible prospective RAs
34.	Sec 25(2)(k) and Reg 36A(12)	Issue final list of eligible prospective RAs
35.	Sec 25(2)(g) & (h) r/w 29 and Reg 36B(1) to (5)	Issue of IM, EM and RFRP (including performance security requirements)
36.	Sec 25(2)(i) and Reg 37,38 & 39	Present all Resolution Plans which fulfill required criteria at the meeting of CoC
37.	Sec 25(2)(j)	File application for avoidance of transactions
38.	Sec 24(8) and Reg 28	Notifying each participant of CoC and AA of any change in CoC consequent to assignment or transfer of debt by a creditor
39.	Sec 25(2)(j), 43,45, 50, 66 and Reg 35A	i) Determination of transactions of the nature of preferential, undervalued, extortionate, fraudulent trading or wrongful trading; (ii) intimation to the IBBI; and (iii) applying to the AA for appropriate relief
40.	Sec 30(2) & (3) and Reg 38 & 39(2)	Submission of compliant resolution plans to CoC (mandatory contents including details of previous non implementation, if any, of Resolution Plan by RAs) along with details of irregular transactions (if any)
41.	Sec 30(6) and Reg 39(4)	Submission of Resolution Plan approved by CoC to AA along with compliance certificate in Form H and the evidence of receipt of performance security
42.	Proviso to Sec 23(1)	Continuing to manage the operation of CD until the order is passed by the AA under section 31
43.	Sec 240 and Reg 39(5)	Communicating order of the AA on Resolution Plan to participants and RAs
44.	Sec 208(2) & Reg 7(2)(h) r/w First Schedule of IP Regulations ³	Abide by the code of conduct

³<https://ibbi.gov.in/uploads/legalframework/28e6d4af87340b69502cc7177aa57772.pdf>

Role of Insolvency Professionals defined through various judgements

Since the inception of this law, role of Resolution Professional has been defined by various decision making authorities through different cases. Following table depicts the same:

S.No.	Case Laws	Role Defined
1.	Asset Reconstruction Company (India) Private Limited v. Shivam Water Treaters Private Limited	IRP has the powers of a Court Officer.
2.	In the matter of Martin S.K. Golla, Insolvency Professional	RP should not make misleading statements and adhere to every guideline to stay a fit and proper person to continue as an IP.
3.	Deepak Seth v. Moods Hospitality Private Limited	IRP can refer any violation / tainted/illegal transaction committed by the ex management/ ex-directors or anyone else to AA
4.	In the matter of Mr. Mukesh Mohan, Insolvency Professional	RP should not mislead the CoC, NCLT and IBBI during CIRP.
5.	Mussadi Lal Kishan Lal v. Ram Dev Int. Ltd	RP has to be an independent party for conducting CIRP. They cannot be related party of either the Corporate Debtor or any creditor.
6.	Anil Goel v. LML Ltd.	RP should follow the timeline prescribed under the Code.
7.	Numetal Ltd. v. Satish Kumar Gupta and Ors.	The nature of duties assigned to a RP is similar to a public servant, as he is being an appointee of the Code.
8.	In the matter of Vedikat Nut Crafts Pvt. Ltd	RP should only engage another counsel if he is incapable of handling the matter on his own.
9.	IDBI Bank Ltd. v. Lanco Infratech Ltd.	RP should not accept too many assignments.
10.	Rajputana Properties Pvt. Ltd. v. Ultra Tech Cement Ltd. & Ors.	The RP is required to examine whether the resolution plan confirms the provisions as mentioned therein, but he cannot disclose it to any other person, including resolution applicant(s) who has submitted the resolution plan.
11.	Rajputana Properties Pvt. Ltd. v. Ultra Tech Cement Ltd. & Ors.	The RP cannot hold or decide as to who is ineligible under Section 29A. Neither Section 30 (2) nor any other provision in the Code confers such power on the RP to scrutinize the eligibility of Resolution Applicants.
12.	V. Nagarajan v. K. Subburaj & Others	RP has to follow the directions of the Tribunal and non compliance of the same will result in penalty.
13.	Inderpreet Singh v. Mariners Buildcon India Limited	Earlier RP will have to cooperate with the new RP wherever they require.
14.	In the matter of Mr. Mukesh Mohan, Insolvency Professional	RP should not mislead the CoC, NCLT and IBBI during CIRP.
15.	In the matter of Mr. Mukesh Mohan, Insolvency Professional	RP cannot make false claims in the Expression of Interest (EoI) and cannot take post facto approval of the CoC.
16.	Binani Industries Limited v. Bank of Baroda and Anr.	The approval of the Resolution Plan is in the domain of the CoC and not of the RP. If the Resolution Plan is approved by the CoC and does



		not provide for full satisfaction of claims of OCs, in absence of any power of the RP to reject such resolution plan, the RP cannot be blamed for the same.
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Conclusion

Looking back at the journey of three years of the insolvency law it cannot be denied that Resolution Professionals have played the most important part in its successful implementation. An effective reorganization can only be done if the agents of the reorganization are masters of their field and carry their duties with utmost integrity and respect. It will be difficult for an Insolvency system to function without specialized professionals. A huge responsibility lies on the shoulders of such resolution professionals especially when they have been given the powers of the Court Officer, thus they should abide by the law and follow the code of conduct and work in the spirit of law.

References

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