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Computation of Time in Terms of Days as Stipulated in the Insolvency and Bankruptcy Code, 2016

In this article, the author explains the principles as to counting of days prescribed for compliances under the relevant provisions of the Insolvency and Bankruptcy Code, 2016

Introduction

The Supreme Court has, in its recent decision in *Surendra Trading Company Ltd. v. Juggilal Kamlapat Jute Mills Ltd.* [2017] 1 IBJ (JP) 92, held that the period of seven days is not a mandatory but a directory provision and hence if any defect is found in the application for corporate insolvency resolution, rectification of such defect may be allowed to be done after seven days period limit stipulated in that proviso, if sufficient cause is shown by the applicant for delay of more than seven days in removing the defect. In the course of the judgment, the Supreme Court endorsed the NCLAT's observation that "time is the essence of the Code" Sections 8 and 9 (and as some other provisions as well) of the Insolvency and Bankruptcy Code, 2016 ('Code 2016') prescribe time limits for various actions in terms of days. If, as the Supreme Court reiterated, time is the essence of the Code, then the parties concerned with the proceedings before the NCLT have to strictly adhere to the time limit and even a day's delay may cause trouble or may be fatal to the application made to the NCLT. In *Mobilex Innovations Pvt. Ltd. v Kirusa Software Pvt. Ltd.* AIR 2017 SC 4532, after discussing the various time limits laid down in Sections 9 and 62, the Supreme Court observed as follows :

"The strict adherence of these timelines is of essence to both the triggering process and the insolvency resolution process. As we have seen, one of the principal reasons why the Code was enacted was because liquidation proceedings went on interminably, thereby damaging the interests of all stakeholders, except a recalcitrant management which would continue to hold on to the company without paying its debts. Both the Tribunal and the Appellate Tribunal will do well to keep in mind this principal objective sought to be achieved by the Code and will strictly adhere to the time frame within which they are to decide matters under the Code."

Meaning of 'day'

As noted already, statutes and legal documents provide for certain things to be done in the given number of days and often preceded by a word or phrase such as 'within', 'not less than', 'not more than' 'on a', etc. The word 'day' is defined in dictionaries as one of the twenty-four-hour periods, reckoned from one midnight to the next, into which a day, month, or year is divided, and corresponding to a rotation of the earth on its axis; the interval of light

between two successive nights; the time between sunrise and sunset. It is also called the calendar day, of 24 hours' duration reckoned from one midnight to the next. Thus, a day is a period of 24 consecutive hours, usually from one midnight to the following midnight but may mean 24 hours commencing at a particular hour if the intention is expressed clearly. For example, a motor insurance policy commonly begins at noon on one day and ends at noon on another. It was held by the Supreme Court in *Raj Kumar Yadav v. Samir Kumar Yadav* 2005 AIR SCW 1647, that in the absence of definition of the word 'day' in Section 81 of the Representation of the People Act, 1951, which provides that an election petition may be presented within forty five days from the date of election, has to be assigned its ordinary meaning as understood in law; the word 'day' as per English calendar begins at midnight and covers a period of 24 hours thereafter.

It was held by a U.S. court that the word 'day' has two meanings: first, the period of light between dawn and nightfall or the interval from sunrise to sunset; second, the 24-hour period during which the earth completes one rotation on its axis. Also called 'mean solar day', it means a division of time equal to 24 hours and representing the average length of the period during which the earth makes one rotation on its axis. A day is a calendar day meaning one of the numbered 24-hour periods into which a week, month, or year is divided. Thus, a day begins at midnight and ends at the/following midnight.¹ It has been held that the date is equivalent to the day on which the meeting was held, the whole day being regarded as a point of time.² The day of the death of the testator was not reckoned where a bond had to be given within six months after the testator's decease.³

In reckoning days, intervening public holidays need not be excluded unless it is so expressed. Sometimes, this is expressed by using the term 'working day/s' to indicate that intervening holidays should be excluded in reckoning the number of days prescribed. For example, clause 16 of the listing agreement provides that the Company shall give a notice period of at least 7 working days to stock exchanges for corporate actions like mergers, de-mergers, splits and bonus shares. In such a case, intervening holidays must be

excluded in reckoning 7 days for giving the notice.

Time expressed in terms of hours and minutes is to be computed according to the twenty-four hour period of day. Sometimes this is called 'hour of the meeting'. The expression 'hour' is used as meaning a specific time of day, and not as meaning a period of time equal to one twenty-fourth of a mean solar or civil day and equivalent to 60 minutes. Therefore, every notice of meeting must state a specific time at which the meeting is to begin; for example, 10 am or 3 pm. The abbreviation A.M. (or AM, or a.m. or am) for Latin ante meridiem, meaning "before noon," refers to the period from midnight until noon. One minute before noon is 11:59 a.m. The abbreviation P.M. (or PM or p.m. or pm) for Latin post meridiem means after noon; it refers to the period between noon and midnight. Some people distinguish between noon and midnight by saying 12 noon and 12 midnight. It is not necessary to state IST.⁴

Meaning of 'date'

The term 'date' is defined in dictionaries as a numbered, specific or a particular day of the month; the day of the month or year as specified by a number. Thus, when a date is to be expressed, there must be a specific day of the month expressed in number, such as 1st January or 31st December. Sometimes a date is expressed as the 15th day of April or 21st day of June. In either case, the reference is to a specific day of the month. Therefore, when a statute or rule or a document refers to 'date' it contemplates a specific day of the month by number

Regarding article 54 of the Schedule to the Limitation Act, which provided a period of limitation of three years from "the date fixed for the performance ... when the plaintiff has notice that performance is refused", the Supreme Court held that the expression 'date fixed for the performance' is suggestive of a specified date in the calendar.⁵

Fractions of a day or date

If you want a period to be measured in whole days, the period should be stated to 'commence on' or 'commence with' a specified or ascertainable day, not a specified or ascertainable time. Some take the view that the word 'time' or equivalent expression suggests

1. *City of Amarillo v. York*, 167 S.W.2d 787 (Texas).

2. *Re Railway Sleepers Supply Co* (1885) 29 Ch D 204.

3. *Sir William Grant in Lester v. Garland* 15 Ves. 248.

4. *Indian Standard Time*.

5. *Ahmmadsahab Abdul Mulla v Bibijan* (2008) 5 SCC 361.

that the period is to be measured from a precise time of the day (for example, 10 a.m.). Similarly, if an event is specified, without mention of the 'day', time may begin to run from the exact time of the happening of the event. There is abundant authority for the proposition that in calculating a period of time within which some act must be done, or after which it may not be done, fractions of a day are to be ignored.⁶ Day (or date) does not mean the hour or the minute, but the whole of the day, and in law there is no fraction of a day.⁷ The general rule of law in the computation of time is that fractions of a day are not reckoned. Sir William Grant in *Lester v. Garland* said:

“Our law rejects fractions of a day more generally than the civil law does. The effect is to render the day a sort of indivisible point; so that any act done in the compass of it, is no more referable to any one, than to any other, portion of it; but the act and the day are co-extensive; and therefore the act cannot properly be said to have passed, until the day is passed.”⁸

The concept of clear day(s)

A statutory provision containing the words “not less than ... days”, contemplates ‘clear day(s)'; for example, according to Section 171 of the Companies Act, 1956, “a general meeting of a company may be called by giving not less than twenty-one days’ notice”. According to the *Black’s Law Dictionary*, ‘clear day’ means one of many full, consecutive days between the date when a period, measured in days, begins and the date when an event that ends the period occurs. For example, if a statute or a contract requires a party to give another party five clear days of notice of a hearing, and the hearing is scheduled to be held on the 31st day of the month, the party giving notice must do so by the 25th days of the month so that five full (clear) days elapse between but not including the 25th and 31st. Thus, a clear day is a period of 24 hours commencing at midnight. When law provides for a particular number of days by using the expression “not less than”, it is said to contemplate that clear days in computing that number should be considered. For example, a notice of not less than fourteen days or an interval of not less than fourteen days is equivalent to saying that fourteen

clear days must intervene or elapse between the two dates of beginning and end of the period. In reckoning the 21 or 25 days, intervening public holidays need not be excluded. Where a statutory provision stated that before passing a resolution imposing a tax, the council shall publish a notice in the gazette of its intention to impose the tax and fix “a reasonable period, not being less than one month” for submission of objections and the notification as published required the inhabitants to submit objections within 30 days of the date of the publication of the notification in the Government Gazette, the Supreme Court held that the words “not being less than one month” implied that clear one month’s notice was necessary and therefore both the first day and the last day of the month had to be excluded. To put it in the language used by *Maxwell on Interpretation of Statutes*, 10th edition, p. 351 : “When ... not less than” so many days are to intervene, both the terminal days are excluded from the computation.”⁹

It has been held with regard to the expression “a general meeting of a company may be called by giving not less than twenty-one days’ notice” (e.g. Section 171 of the Companies Act, 1956) that the phrase “not less than twenty-one days” means that the notice must be given of twenty-one clear days and hence there should be an interval of twenty-one clear days between the date of the meeting and the date of service of notice exclusive of the day of service and also of the day on which the meeting is to be held.¹⁰ The expression implies twenty-one whole or clear days. Part of the day, after the hour at which the notice is deemed to have been served, cannot be combined with the part of the meeting, to form one day.

In Re Railway Sleepers Supply Co. (1885) 29 Ch D 204, the English Companies Act 1862, Section 51, provided: “A resolution passed by a company shall be deemed to be special whenever a resolution has been passed at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first

6. *Cartwright v. Maccormack* [(1963) 1 All ER 11.

7. *Lord Mansfield in Pugh v. Duke of Leeds* 2 Cowp. 714.

8. *Re Railway Sleepers Supply Co* (1885) 29 Ch D 204.

9. *Pioneer Motors Pvt Ltd v Municipal Council, Nagercoil* AIR 1967 SC 684

10. *Re Railway Sleepers Supply Co* (1885) 29 Ch D 204; *Re Hector Whaling Ltd* (1936) 1 Ch D 208; (1937) 7 Comp Cas 22; *NVR Nagappa Chettiar v The Madras Race Club* (1949) 19 Comp Cas 175 (Mad); *Balwant Singh Sethi v Sardar Z H Singh* (1988) 63 Comp Cas 310 (Bom); *Chambers v. Smith* 12 M. & W. 2.

passed.” The first meeting was held on 25 February and the second meeting on 11 March. Chitty J. held that the interval of not less than fourteen days which under Section 51 is to elapse between the meetings passing and confirming a special resolution of a company is an interval of fourteen clear days, exclusive of the respective days of meeting, and therefore a special resolution for reduction of capital passed at a meeting held on the 25th of February, 1885, and confirmed at a meeting held on the 11th of March, 1885, was held to be bad as only thirteen clear days had elapsed between the two meetings.

In Re Hector Whaling Ltd. (1936) 1 Ch D 208/[1937] 7 Comp Cas 22, on a petition by Hector Whaling Ltd for the reduction of capital the question arose whether the meeting, at which the resolution to reduce the capital was passed, had been validly summoned. The notice convening the meeting was dated and posted on 8th May 1935. The notice was for the holding of the meeting on 30th May. The Court held that twenty-one clear days’ notice had not been given and the meeting was invalid. The period of not less than twenty-one days relating to notices of meetings means a period of not less than twenty-one clear days, exclusive of the day of service of the notice and exclusive of the day on which the meeting is to be held. Provisions in the articles regulating the date on, which a notice is to be deemed to be served must be considered; but an article which provides fiat the day of service of a notice is to be counted in the relevant number of days must be disregarded.¹¹

It may incidentally be noted that so far as service of documents under the Companies Act 1956 are concerned, two more days are to be added to the twenty-one clear days pursuant to Section 53(2) (b)(i).¹² Therefore, notice of a general meeting must be sent at least 25 days before the date of the meeting. For example, for convening a general meeting on the 25th of a month, notice of the meeting must be posted on the 1st of that month.

The Delhi High Court has held that the date of service of notice of the general meeting and the date of the meeting have to be excluded while counting 14 days being the period of notice as the expression “not less than 14 days” normally implies notice of 14 whole

or clear days; part of the day after the hour at which the notice is deemed to have been served cannot be combined with the part of the day before the time of the meeting, on the date of the meeting, to form one day. Each of the 14 days must be a full or a calendar day so that the notice can be said to be not less 14 days’ notice’.¹³

Where the company had posted notices of its meeting on August 31st and September 1, 1987 and the meeting was scheduled to be held on September 21, 1987. Thus, the notices were posted on the 21st and the 22nd day respectively before the date of the meeting. The Court held that the members of the company were not given twenty-one days’ clear notice.¹⁴

This rule applies to the notices of general meetings of private companies also even if the articles of association of such companies prescribe a period lesser than twenty-one days for the purpose of giving the notices of their general meetings. The only difference would be that the addition of four days would be made to the number of days prescribed in the articles. For instance, if the articles of association of a private company provide that a general meeting of the company may be called by giving not less than three days’ notice, then a notice of any general meeting of this company should be posted at least seven days before the day of the meeting.

The phrase ‘not less than seven clear days’ was considered in *Jai Charan Lal Anal v. State of UP*¹⁵ concerning a statutory provision which required that notice of a meeting shall be sent by registered post not less than seven clear days before the date of the meeting. It was argued that in counting days, the critical date was not the date on which the notice was despatched, but the date on which the notice is received. Rejecting that contention, the Supreme Court held that the word ‘send’ shows that the critical date is the date of the despatch of the notice (and not the date of receipt of the notice) and as the notice was sent on the 17th and the meeting was to be called on the 25th, it was obvious that seven clear days did intervene and there was no breach of this part of the Section.



11. *Rex v. Turner* [1910] 1 K. B. 346 and *Chambers v. Smith* (1843) 12 M. & W. 2 applied.

12. *Bharat Kumar Dilwali v Bharat Carbon & Ribbon Mfg Co Ltd* (1973) 43 Comp Cas 197 (Del); *Maharaja Exports v Apparels Exports Promotion Council* (1986) 60 Comp Cas 353 (Del).

13. *Maharaja Exports v Apparels Exports Promotion Council* [1986] 60 Comp Cas 353.

14. *Balwant Singh Sathi v Sardar Zorawarsingh Hushnak Singh Anand* [1988] 63 Comp Cas 310. *Balwant Singh Sathi v Sardar Zorawarsingh Hushnak Singh Anand* [1988] 63 Comp Cas 310

15. AIR 1968 SC 5.



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Hurdles in Taking Over the Business of Corporate Debtor – What can We do?

In this article, the author highlights hurdles in taking over the business of a Corporate Debtor as a going concern and explores possible solutions to overcome them.

Background

The Insolvency and Bankruptcy Code ('Code') was uniquely drafted, by bringing experienced professionals as 'Resolution Professionals', to handle the assignments which are going through the Corporate Insolvency Resolution Process ('CIRP'). The main objective of this Code was to ensure the administration of the company as a Going Concern and to protect the interest of all the stakeholders. In order to effectively perform the role of a Resolution Professional, despite hurdles faced, there is need to understand the background, Objectives of the Code, and reason for involvement of Professionals in the Code. The role of IRP and RP is that of the 'Resolution Professional' there being no difference between IRP and RP in the handling of a business.

Background and Objectives

The Reserve Bank of India had initiated several measures to improve the recovery of dues from corporates. One of the reasons why most of the measures were not successful, was because the expectation from those measures was always the recovery of the dues, while the promoters were expected to solve their own business challenges. Secondly, there was no effort to understand the root cause of the problems in the business and as a result, there was no exploration of alternative modes of sustenance. This expertise of problem-solving through crisis and operating the company from a 'big picture' perspective during such situations was not available with the banks and financial institutions and it was not expected of them to provide these services.

As we look at the present growing NPA levels in the banking sector of India, the Government had to prevent this by bringing in highly experienced professionals, who has the expertise to provide focused attention, understand the root cause of the issues and can support them in the revival of the company.

The Code and Regulations have been framed to ensure that the Insolvency Professionals are independent, carry out the tasks diligently, treating the assets of the debtor with honesty and transparency, maintain the

confidentiality of information acquired as a result of professional relationships and act in a fiduciary capacity towards the corporate debtor and the creditors as a whole.

Power and duties of Resolution Professional

The summary of various sections of the Code concerning the powers and duties of the Resolution Professional are highlighted as follows :

Management of affairs of corporate debtor by Resolution Professional – The RP is vested with all the powers required to run the business of the Corporate Debtor and the Board of directors remain suspended during the CIRP. [Section 17]

Duties of the Resolution Professional – The Resolution Professional has to ensure that the assets of the Corporate Debtor are taken into control and protected while ensuring the receipt / scrutiny of claims and formation of Committee of Creditors (COC). It is his duty to audit the business and financials in the previous two years to ensure that there is no malpractice of any kind in the past two years. [Section 18]

Mandatory Support – The mandatory support from the promoters and the management during the CIRP is contemplated. In the case of non-cooperation, the support is available through the Adjudicating Authority in the form of appropriate directions. [Section 19]

Executive power of IRP – The business of the Corporate Debtor is to be managed as a going concern, with the support of a professional team and funds and the IRP is given executive powers for the same. [Section 20]

In summary, the powers, duties and, responsibilities, that are expected by the RP is as stated below:

- ◆ Handling the business like a CEO of the Corporate Debtor
- ◆ Reporting, advising the COC and taking approvals when required
- ◆ Taking over the assets and protecting them
- ◆ Running the business of the Corporate Debtor as a going concern

- ◆ Ensuring the claims are received, verified and updated.
- ◆ Arranging interim funds for the working capital

From the sections 17 to 20, we can understand that the Resolution Professional is vested with all the powers required to perform his duties effectively. While the Resolution Professional is empowered with the various provisions of the Code to take over the Corporate Debtor, he has to understand the magnitude of the powers vested in him/her and exercise them in a judicious manner. However, there are practical hurdles in taking over the business of a Corporate Debtor as a going concern. In order to effectively perform the role of the Resolution professional, it is essential to understand these hurdles and explore possible solutions to overcome them.

Hurdles in taking over the business of Corporate Debtor and suitable actions

The Resolution Professional is the driving force of the entire CIRP and the success or failure of the CIRP lies mainly with the Resolution Professional. In addition to his education and expertise, leadership skills combined with adequate preparation with respect to each assignment can help the Resolution Professional in overcoming the hurdles and to effectively achieve the objectives of the Code.

Hurdle 1 : Taking over the business of unknown sector and the limited CIRP period of just 6 months

Knowledge and experience of the specific sector in which the Corporate Debtor is doing business are essential for the deemed CEO – Before giving consent for an appointment, it is better if the Resolution Professional does some research with respect to the industry, business, products, market outlook and the present status of the sector. If he feels that he can manage one such business and is confident of coming out with a Resolution Plan, he/she should submit his consent. Based on his/her interests, the Resolution Professional may even decide to specialize in specific sectors.

CIRP is just for 6 months and the Resolution Professional is expected to take over the running of the company from day one. There is no gestation period available for him to learn the specifics and peculiarities of the business – Resolution Professional needs to make use of the time available to understand the nuances of the company, after submission of Form 2 and before his appointment. Also, at this stage, it is important to collect all the information about the business and the Company, including complete financials of the Corporate Debtor and group companies. Most of these information is available in the public domain and hence can be collected in advance. It is also advisable to have detailed discussion with various stakeholders, to understand more about the company, its current locations, details of suppliers, the problem faced by them and more insight about the promoter and the management team.

What is expected of the Resolution Professional is a high level knowledge of the business of the Corporate Debtor. He should be able to take decisions for the running of the company. He has to take decisions, provide guidance, with respect to planning, marketing and sales, finance, operations, purchases, storage, delivery, and, statutory compliance.

The success of Resolution Professional lies in using the existing expertise and ensure that the control points are understood and taken over by him. It will be helpful to list out areas where he needs more expertise and better to bring in specialists accordingly without wasting further time. There is no one tailor made solution to the Resolution Process and hence he has to thoroughly study and analyze ground realities, formulate robust systems, initiate corrective actions while implementing the decisions.

Hurdle 2: Hostile behavior of the promoters and employees on Day 1 based on insider vs. outsider perspectives

It is important to get the confidence and cooperation of employees, not only of the senior management team but the whole team including all the staff. Once the promoter is cooperative, the promoter ensures that employees cooperate. The issues commonly faced are as follows :

- The Corporate Debtor is not aware of the objectives and also the legal provisions of the Code and hence he assumes that you are taking over the company like a liquidator and from day 1, he is hostile towards the Resolution Professional.
- Perception of the employees is that an outsider is taking over the business and it is against the interest of the company and its employees

On receipt of CIRP Order from Adjudicating Authority, a disciplined approach can help the Resolution Professional manage the hostile behavior of the Promoters and employees in the following manner :

- Resolution Professional, may send an advance mail to the promoters of the Corporate Debtor about his visit, attaching a copy of the CIRP order released by the NCLT. Specify in the mail in case Corporate Debtor is to keep certain documents ready.
- It may not be advisable for the Resolution Professional to make the first visit alone. It is better to go with a team, depending on the size of the company.
- As the law is yet to percolate completely, for the first meeting, it is vital to go with a power point presentation or a summarized version of the Code that explains the law in brief, with respect to the objective of law, duties and responsibilities of various stakeholders and powers of COC, powers and duties of Resolution Professional, the steps involved in CIRP and other applicable legal provisions. This will help them appreciate the law and their mental preparation to cooperate.
- When you meet the promoters, appreciate the fact that he has been running the business for several years and he/she knows the business better. Creating a cordial atmosphere with the promoter and key management professionals (KMPs) in the first meeting is very important. Once the promoter and his team feel comfortable, they will openly express and explain their problems. RP needs to be a good listener.

Very soon, the Resolution Professional may even identify the internal whistleblowers and key decision makers, who are really interested in the viability of the business

Hurdle3: While most of the businesses are promoter-centric, the promoter may not give up the management of the business easily. Even if the promoter gives up full control, considering the short time frame available for the Resolution Professional, handling the business without his support is challenging.

The promoter, who has toiled for his business since inception is the expert, and he/she would have accumulated wealth of knowledge over the years. Unless, there is reason to believe that he/she is fraudulent and is going to be a distraction to the running of the business, in a normal situation, the Resolution Professional should explore how well he can make use of the support of the promoter or key employees in running the business, while ensuring that the control lies with the IRP. Based on hard facts, if the Resolution Professional, believes that involving the promoter in the day-to-day business is going to be risky, he/she needs to see whether there is a senior management team which is reliable. In the case of a decentralized system, keeping the promoter away from attending the office is not difficult task. When the promoter is kept out of the business, the Resolution Professional can expect that the promoter can indirectly trigger the employees externally and create issues on day-to-day working. Hence, he should have a backup plan to handle such situation. He has to remind the promoter and employees about the legal provisions with respect to non-cooperation, hiding of information, manipulation of documents, and take appropriate orders from an Adjudicating authority immediately. He has to make it clear that stern action shall be taken against erring employees.

Hurdle 4: Taking over the assets of the business, in the absence of a proper asset register and financials not audited for several years.

The Resolution Professional may try to understand the types of assets in the company its locations. Many a times, the asset register will not be readily

available. During such times, try to take over the physical assets available on that day, by listing out all the physical assets location wise, with details like the model, the year of manufacture, etc., as visible from the assets and also the working condition of each asset. Resolution Professional is to coordinate with the concerned team and auditors of the company and try to get the asset registers updated and tallied with the financials. The gap between the assets as per books and the physical assets verified is then to be addressed accordingly. Detailed discussion with the auditors and appraising them of the legal requirement of the pending audit within the timeline is very important. Coordinate with the auditors and have regular meetings with auditors and KMPs of Corporate Debtor, to close the pending issues, audit objections in order to get the audited financials.

Hurdle 5: Understanding internal systems and ERPs and other software used by the Corporate Debtor

Resolution Professional may come across informal decisions taken at various levels. Understanding quickly the existing delegation of authority and streamlining this is important for him. He should try to come out with a quick list of 'do's and don't's and the new process to be followed by various departments and circulate it to concerned employees. As soon as possible, try to get the details of software/s being used accordingly take appropriate experts to take over the back-up of the database and also collect MIS directly from the software. The data as per ERP has to be scrutinized by the RP in addition to the Audited Financials and other information provided by Corporate Debtor.

Hurdle 6 : Sickness of the business

The sickness of the business makes his job tougher compared to a normal business and poses several challenges. The Resolution Professional has to keep in mind that the company is going through the CIRP process, due to default in payment to the stakeholders. This default might be due to a genuine sickness of the sector / business or due to fraudulent activities by the promoter.

Quick assessment of the sickness can be made by –

- (i) discussing / listening to the directors and the, senior team, and understand the situation in which the default occurred,
- (ii) independently analyzing the financial transactions, understanding the costing processes and the costing of products, processes and the perusal of the MIS of various business segments is very important,
- (iii) having informal dialogue with the auditors, a senior professional who left the company in the recent past are some of the ways to understand the reason for sickness.

Once the RP understands the root cause of the sickness of the business, he will get more clarity on the possible solutions for revival.

Hurdle 7 : Taking action against various transactions like fraudulent trading, preferential transactions, etc.

Though the Resolution Professional is trying to establish a cordial relationship with Corporate Debtor and his team, it is his duty to examine the possibilities of diversion of funds, fraud, preferential transactions, etc. Try to use an independent professional or an external Chartered Accountant firm to get all major financial transactions examined. Based on the findings, it is better to have a dialogue with the promoters for further clarification. This examination can lead to a forensic audit. Action may follow for wrongful or fraudulent or preferential transaction and according to the results obtained, follow the legal processes. In the case of fraudulent activities, though the promoter and the employees seem to cooperate, due to legal compulsions, the Resolution Professional has to always read between the lines and stay alert.

When the insolvency process was initiated by a Corporate Debtor under section 10 of Code, taking action against him towards preferential transactions, wrongful trading, etc., may be tough for a the Resolution Professional as the Corporate Debtor has appointed him/her. The Resolution Professional has to make it very clear even well before his appointment that he has to be unbiased and follow the ethical and legal processes.

Hurdle 8 : Inadequate knowledge of the financial creditors about Code and their outlook

In multiple situations, financial creditors think that the CIRP is a recovery process and their focus is on the recovery of the dues. It is the duty of Resolution Professional to educate them about the objective of the Code and the responsibility of protecting the interest of all stakeholders. Sometimes, the COC may talk about adopting a parallel recovery process on the company with respect to the overdues. Resolution Professional has to explain the Code and guide them with latest NCLT / NCLAT decisions with respect to such parallel recovery processes.

Hurdle 9 : Poor response from operational creditors in continuing the supply of goods to the Corporate Debtor

When the business is continuing and there are overdues to the suppliers, continuing further supplies without clearing earlier payments The Resolution Professional should have a dialogue with each supplier or communicate to various suppliers about his taking over and should explore the possibility of revival. . He needs to assure the suppliers that if they continue to supply, chances of saving the business and getting their dues is better and it also helps to protect their future business with the Corporate Debtor. In case of critical supplies, the Resolution Professional has to also work in getting alternate suppliers.

Hurdle 10 : Raising interim finance

Banks will not provide interim Finance due to the account being NPA/stressed asset and they do not want to pump in good money after bad money. Though the past financial performance is a good indicator, the Resolution Professional has to make realistic financial projections for the next 6 months in order to understand the Interim Finance required. He has to explore internally all the possible measures to minimize the cash flow deficit, including cost reductions, analyzing and rescheduling the expenses, curtailing certain expenses.

With respect to customers, he needs to understand the purchase order (PO) terms. Many times, though PO mentions advance payment of 25%-30%, the

advance is not received and the company has the habit of making deliveries without insisting on advance payments. He may streamline this in order to meet a portion of the cashflow.

Also, special attention is to be given to the receivables. Resolution Professional needs to undertake age-wise analysis of the receivables and also look into the details of customers with huge over-dues. It is appropriate to streamline further deliveries to the overdue customers. He may also explore quick disposal of redundant machines, land not used in the business, to meet the Interim Finance required.

During this process of financial projection, Resolution Professional may also come across the Capital expenditure required, for the business to continue as a going concern. This input is to be highlighted in the information memorandum provided to potential investors. He has to ensure that interim finance does not include any new capital purchase, unless it is proved to be a must for the present running business as a Going Concern.

Conclusion

We need to be clear that the Resolution Professional has to act like CEO with a very good understanding of the sector, the business and have adequate management skills. He is not expected to be with a mindset of a worker who has minute attention to detail nor is seen as a compliance officer. As he may not have all the expertise required

for running the business of Corporate Debtor, the law empowers him to appoint professional experts required for running the business of Corporate Debtor as a going concern. With the team facilitating and controlling the business operation, he can focus on the big picture of understanding the business, analyze the root cause of the issues of sickness and develop a Resolution Plan.

While the Resolution Professional has to deal with operational challenges, he needs to consider each day as an opportunity to know the business better and contribute to the running of the business.

One way to be effective is to take handful assignments and try to provide adequate time for each assignment. If the company is a running company, based on the personal assessment, provide fixed resources stationed at the premises, who in turn can report to the Resolution Professional. However, all important controls and major decisions are his responsibility and cannot be delegated.

The positive mindset of the Resolution Professional and his exposure, education, maturity in dealing with situations and taking timely decisions shall go a long way in coordinating with all the stakeholders effectively and managing the CIRP processes.

At the end, the success of Resolution Professional lies in finding solutions to the various hurdles in his assignment and the joy that arises on completing the Resolution Process to the satisfaction of all the stakeholders is immense.

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