

### Lesson 3

## PROFESSIONAL AND ETHICAL PRACTICES FOR INSOLVENCY PRACTITIONERS

### Case Laws

SR. No.	Case law	Integrity and Objectivity	Takeaway
1.	Asset Reconstruction company Ltd. vs. Shivam Water Treaters Pvt Ltd, (NCLT)	Integrity and Objectivity	IRP is acting as a Court Officer and any hindrance in the work of CIRP will amount to contempt of Court. NCLT ordered police assistance to be given to the resolution professional if any hindrance occur in the work of CIRP
2.	Sanjay Kumar Ruia Vs. Catholic Syrian Bank Ltd. & Anr (NCLAT)	Integrity and Objectivity	if the amount based on the bills & ledger have been approved by the COC the liquidator cannot reject the same being the 'resolution cost' and not claim of any creditor.
3.	BMW India Financial Services Private Limited v. SK Wheels Private Limited (NCLT)	Integrity and Objectivity	<ol style="list-style-type: none"> <li>1. The actions or inaction on the part of RP in not taking a decision with respect to the claim of the Applicant is an abuse of the powers given to him under the code and contrary to justice and public policy.</li> <li>2. The landowner is just not entitled to receive the license fee but also, he has to right to receive the possession of the said premises. The tenancy rights automatically get terminated, the moment default in payment of rent is committed.</li> </ol>
4.	Ruchita Modi v. Mrs. Kanchan Ostwal & Anr (NCLAT)	Integrity and Objectivity	<ol style="list-style-type: none"> <li>1. In case IRP has any difficulty regarding CIRP cost, he would entitled to move to AA and applicant will be bound to pay the CIRP cost.</li> <li>2. It will be open for operational creditor in case of default of payment to move to the Appellate Tribunal to recall the order and to revive CIRP process against CD</li> </ol>
5.	State Bank of India Vs. M/s. Metenere Ltd. (NCLAT)	Independence and Impartiality	NCLAT held that even if the IP is eligible under IBC, NCLT can order the substitution of the name of IP if it is of the opinion that the IP may have biasness
6.	M/s. Surendra Trading Company V. M/s. Juggilal Kamalapat Jute Mills Company Limited and Others (SC)	Timeliness	Timelines Under Section 7,9,10 for deciding a matter within 14 days and the time to remove a defect within 7 days are directory and not mandatory
7.	Committee of Creditors of Essar Steel India Limited V. Satish Kumar Gupta & Ors (SC)	Timeliness	In few cases (such as short time left for completion of CIRP or no fault of litigants in delay) AA/AP can extend time of CIRP beyond 330 days
8.	Rajputana Properties Pvt. Ltd. Vs. Ultra Tech Cement Ltd. & Ors., (NCLAT)	Confidentiality	Resolution plan being confidential cannot be disclosed to any other person including any competitor resolution applicant nor any opinion can be taken or objection can be called from other applicant.

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9.	Vijay Kumar Jain Vs Standard Chartered Bank & Ors (SC)	Confidentiality	Resolution Professional can take an undertaking from members of the erstwhile Board Of directors to maintain confidentiality.
10.	IDBI Bank Ltd. v. Lanco Infratech Ltd, (NCLT)	Occupation, employability and restrictions	Proposed IRP would not find sufficient time to act as IRP for the respondent Company considering his previous three assignments to large companies and the current corporate debtor itself is a large company
11.	Anil Goel v. LML Ltd (NCLT)	Occupation, employability and restrictions	RP failed to submit the progress report/ the resolution plan within time. The above act shows that he was not careful in following the timeline prescribed under the Code.
12.	Anurag Nirbhaya Vs. Anuj Maheshwari & Ors (NCLT)	Remuneration and costs	The AA observed that the exorbitant fee has been claimed by the IRP and stated that generally they allow fee @ Rs. 1 Lakh per month to the professionals.
13.	Punjab National Bank Vs. Divyajyoti Sponge Iron Pvt. Ltd (NCLT)	Remuneration and costs	<ol style="list-style-type: none"> <li>1. AA hoped that IBBI would frame necessary regulation/guideline for fixation of fees and resolution cost by a RP.</li> <li>2. An IP should not charge abnormally high fees in relation to the services</li> <li>3. Fees paid to the RP appointed on the direction of COC Should not be included as Insolvency Resolution Process Cost (IRPC)</li> </ol>
14.	V Nagarajan Vs. SKS Ispat and Power Ltd.& Ors (SC)	Timeliness	RP is responsible for ensuring timeliness of the process and has to file several forms as detailed under Regulation 40B and explain all delays
15.	Sandeep Khaitan, Resolution Professional for National Plywood Industries Ltd. Vs. JSVM Plywood Industries Ltd. & Anr. (SC)	Functions and obligations of insolvency professionals	RP's powers are same as Interim Resolution Professional. RP is also bound to seek prior approval of COC in matters covered by Section 28.
16.	Manish Kumar Vs. Union of India & Anr. (SC)	Functions and obligations of insolvency professionals	RP has to examine each resolution plan and ascertain whether the plan is in conformity with Section 30(2). All Acts done by the RP regarding the CIRP process are all subject to direction of COC
17.	Arcelor Mittal India Private Limited Vs Satish Kumar Gupta & Ors. (SC)	Functions and obligations of insolvency professionals	<ol style="list-style-type: none"> <li>1. The RP is not required to take any decision, but merely to ensure that the resolution plan submitted are complete in all respect before they are place before COC.</li> <li>2. Section 30(2)(e) Does not empower RP to decide whether the resolution plan does or does not contravene the provision of law</li> </ol>