Role, Functions and Duties of Insolvency Professional, Interim Resolution Professional and Resolution Professional

Lesson 16

KEY CONCEPTS

■ Insolvency Professional ■ Interim Resolution Professional ■ Resolution Professional ■ Committee of Creditors ■ Code & Conduct

Learning Objectives

To Understand

- Appointment of Interim Resolution Professional
- Appointment of Resolution Professional
- Resolution Professional
- Management of Affairs of Corporate Debtor
- Meeting of Committee of Creditors
- Duties of Resolution Professional

Lesson Outline

- Introduction
- Provisions of the Insolvency and Bankruptcy Code, 2016 relating to Resolution Professional & Interim Resolution Professional
- Role of Insolvency Profession as an Authorised Representative under the Code
- The IBBI (Insolvency Professionals) Regulations, 2016
- Public Announcement
- Code of Conduct of Insolvency Professional
- Duties and Powers of Interim Resolution Professional/ Resolution Professional
- Professional fee
- Case Laws
- Lesson Round-Up
- Test Yourself
- Other References (Including Websites / Video Links)

REGULATORY FRAMEWORK

- The Insolvency and Bankruptcy Code 2016
- The IBBI (Insolvency Professionals) Regulations, 2016
- The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
- The IBBI (Model Bye- Laws and Governing Board of Insolvency Professional Agencies), 2016

INTRODUCTION

The Banking Law Reform Committee (BLRC) Report- Volume 1, Rationale for the Code elaborated the significance of role of Insolvency Professional as follows:

Insolvency professionals play a vital role in the insolvency and bankruptcy resolution process as envisaged by the Committee. As mentioned in the report -insolvency and bankruptcy resolution under the Code will proceed in two phases, for registered entities as well as for individuals.

- The first phase of the insolvency and bankruptcy process is the period of insolvency resolution during which insolvency is assessed and a solution is reached within a stipulated time period.
- In case a solution is not reached within the specified time limit, the second phase of the process begins wherein the entity is declared bankrupt. At this point a registered entity enters into Liquidation whereas an individual enters into bankruptcy resolution.

This entire insolvency and bankruptcy process is managed by a regulated and licensed professional namely the Insolvency Professional or an IP, appointed by the adjudicator. In an insolvency and bankruptcy resolution process driven by the law, there are judicial decisions being taken by the adjudicator. But there are also checks and accounting as well as conduct of due process that are carried out by the IPs. Insolvency professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process.

An IP may hold any of the following roles under the Code:

1. Resolution professional (RP) to resolve insolvency for a firm or an individual;
2. Bankruptcy Trustee in an individual bankruptcy process;
3. Liquidator in a firm liquidation process.

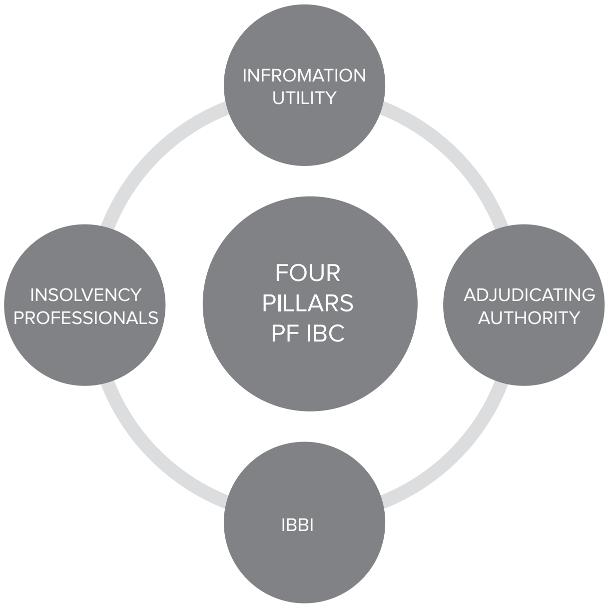
In administering the resolution outcomes, the role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions. The latter include the identification of the assets and liabilities of the defaulting debtor, its management during the insolvency proceedings if it is an enterprise, preparation of the resolution proposal, implementation of the solution for individual resolution, the construction, negotiation and mediation of deals as well as distribution of the realisation proceeds under bankruptcy resolution. In performing these tasks, an IP acts as an agent of the adjudicator. In a way the adjudicator depends on the specialized skills and expertise of the IPs to carry out these tasks in an efficient and professional manner.

The REPORT also describes the mandates for the IPs and delineate a framework for regulating IPs as follows:

In the case of insolvency resolution, a failure of the process may result from two main sources: collusion between the parties involved and poor quality of execution of the process itself. Hence, it is important that the professionals responsible for implementing the insolvency resolution process adhere to certain minimum standards so as to prevent failures of the process and enhance credibility of the system as a whole.

In India today, there are professionals and intermediaries that offer services to resolve financial distress of both registered entities as well as individuals. These include lawyers, accountants and auditors, valuers and specialist resolution managers. However, given the critical role that the Code envisages for these entities in the resolution process, the Committee believes that the Board should set minimum standards for the selection of these professionals, along with their licensing, appointment, functioning and conduct under the Code.

To this end, the Code empowers the Board to lay down the minimum professional standards and the code of conduct to be followed to by IPs at each stage of the insolvency and bankruptcy resolution process.

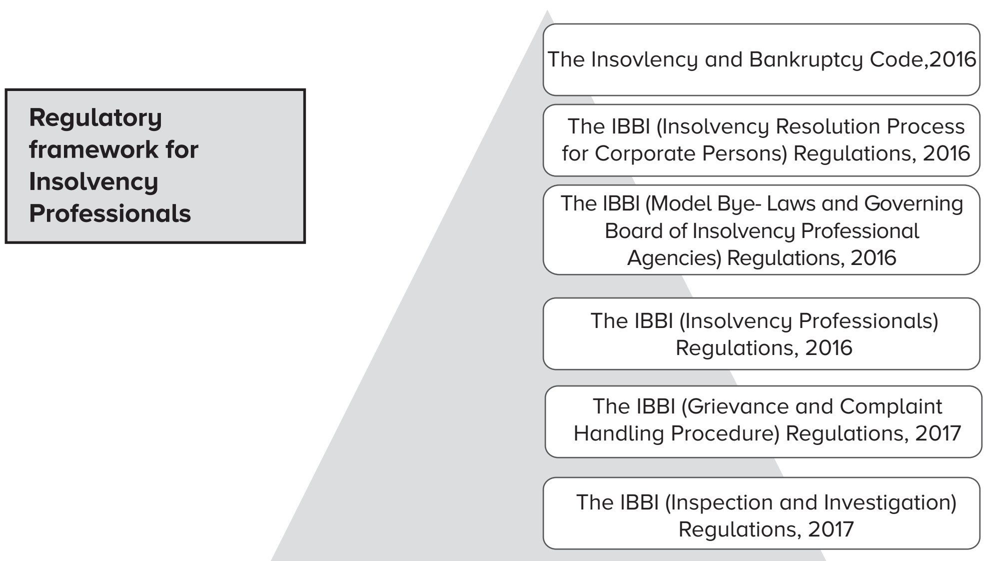


- Out of the four pillars of IBC,2016, the first pillar of the IBC's institutional infrastructure is insolvency professionals (IPs).
- An IP is one of the most important components of the IBC ecosystem.
- An IP is a regulated and licensed professional, responsible for managing and overseeing the CIRP and/or the liquidation process of the CD, and the resolution and bankruptcy process for partnerships and individuals.
- IPs form a crucial pillar on which the entire edifice of the insolvency and bankruptcy process rests.
- The Disciplinary Committee set up by the IBBI and the Insolvency Professional Agencies also play a crucial role in ensuring that the IPs adhere to ethical standards and the Code of Conduct.

The IBC gives various powers to IPs, while subjecting them to regulatory and judicial oversight. The first level of regulatory oversight of an IP is provided by the insolvency professional agency (IPA) with which the IP is registered. To support IPs, the concept of an insolvency professional entity (IPE), a regulated service provider supporting IPs, is also recognized.

IPs are aided in the insolvency resolution, liquidation, and bankruptcy process by information utilities (IUs), which form the second pillar of the institutional infrastructure. The IUs are regulated and licensed repositories of information relating to the CD. IUs collect, collate, authenticate, and disseminate financial information to be used in insolvency resolution, liquidation, and bankruptcy proceedings.

The judicial oversight of IPs is provided by adjudicating authorities (AAs), the third pillar of the IBC's institutional infrastructure. The AAs are specialized tribunals tasked with ensuring that the insolvency resolution, liquidation, and bankruptcy process is being performed as per the IBC and its related rules and regulations.



Only an IP can be appointed under the IBC as	- an interim resolution professional (IRP), - a resolution professional (RP), - a liquidator, or - a bankruptcy trustee.

An IP is defined in section 3(19) of the IBC as a person enrolled under section 206 with an IPA as a member and registered with the IBBI as an IP under section 207.

The AA appoints an IRP or an RP to run the CIRP of a CD, and a liquidator to run the liquidation process. A bankruptcy trustee runs the insolvency and bankruptcy process for partnerships and individuals. Hence, the IP—acting as an IRP, RP, liquidator, or bankruptcy trustee—is the foundation of the IBC.

ROLE OF INSOLVENCY PROFESSIONALS	
As an Interim Resolution Professional (IRP)	Chapter II (Part II of the Code)- Insolvency Resolution Process of Corporate Persons
	Chapter IV (Part II of the Code)- Fast track corporation insolvency resolution process
As a Resolution Professional	Chapter II (Part II of the Code)- Insolvency Resolution Process of Corporate Persons
	Chapter III-A (Part II of the Code) Pre-Packaged Insolvency Resolution Process
	Chapter IV (Part II of the Code)- Fast track corporation Insolvency resolution process
As a Liquidator	Chapter III (Part II of the Code)- Liquidation Process of corporate persons
	Chapter V (Part II of the Code)- Voluntary Liquidation Process of corporate
As a Bankruptcy Trustee	PART III of the Code-Insolvency Resolution And Bankruptcy For Individuals And Partnership Firms

In the corporate insolvency resolution process, the insolvency professional runs the debtor's business during the moratorium period, verifies the claims of the creditors and constitutes a creditor's committee and helps the committee of creditors in arriving at a consensus for the revival and rehabilitation of the corporate debtor's business. In liquidation, the insolvency professional acts as a liquidator and in case of individual and partnership insolvency resolution, he performs the role of bankruptcy trustee.

The Resolution Professional (RP) holds a central position in conducting the CIRP and his role is vital to the efficient operation of the resolution process. The RP acts as a bridge between the debtor and the creditor and plays a significant role in aligning the interests of the CD with those of the creditors. The RP is appointed as an officer of the AA to conduct the resolution process and is vested with various statutory duties and powers. It is the RP who communicates with AA on behalf of CoC.

Definitions in the Insolvency and Bankruptcy Code, 2016:

Section 3(19): "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.

Section 5(18): "Liquidator" means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of Part II, as the case may be.

Section 5(27): "Resolution Professional", for the purposes of Part II, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim-resolution professional.

Section 79(9): "Bankruptcy Trustee" means the insolvency professional appointed as a trustee for the estate of the bankrupt under section 125.

Section 79(21): "Resolution Professional" means an insolvency professional appointed under Part III as a resolution professional for conducting the fresh start process or insolvency resolution process.

An IP is a person who is enrolled with an IPA as a member and registered with the IBBI after qualifying Limited Insolvency Examination. Any eligible person having the required experience and qualifications including a chartered accountant, cost accountant, company secretary, advocate, managerial person can seek registration with an IPA and IBBI after meeting the requirements of the regime.

Thus, an IP is a crucial pillar responsible for the effective, timely and credible functioning of the entire edifice of the insolvency and bankruptcy resolution process. In administering the resolution outcomes, the role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as general management and finance related functions.

The IP is required to adhere to a strict code of conduct while performing his obligations under the Code and also ensuring there are adequate procedures and policies laid down and implemented by his team deployed on any ongoing CIRP.

Part IV of the Code lays down Regulation of Insolvency Professionals, Agencies and Information Utilities. Chapter IV of Part IV deals with registration, functions and obligations of Insolvency Professionals.

The Code has provided for a two-tier regulation of IPs: -

(i) The first-tier regulation of IPs is steered by the IPAs who administer the registration of IPs and promote and supervise their continuous development.

(ii) The second-tier regulation is steered by the IBBI which maintains a panel of IPs who have no disciplinary proceedings pending or against them and who hold Authorisation for Assignment or consented for assignments.

This saves judicial time in appointments. Thus, an IP is a crucial pillar responsible for the effective, timely and credible functioning of the entire edifice of the insolvency and bankruptcy resolution process. In administering the resolution outcomes, the role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as general management and finance related functions.

The IP is required to adhere to a strict code of conduct while performing his obligations under the Code and also ensuring there are adequate procedures and policies laid down and implemented by his team deployed on any ongoing CIRP.

ELIGIBILITY FOR RESOLUTION PROFESSIONAL UNDER THE IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016

Regulation 3(1) lays down the criterion for a person who can be appointed as an interim resolution professional or resolution professional as follows:

(1) An insolvency professional shall be eligible to be appointed as an interim resolution professional or a resolution professional, as the case may be, for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

Explanation is provided to determine when a person shall be considered independent of the corporate debtor i.e. if he:

(a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013 , where the corporate debtor is a company;

(b) is not a related party of the corporate debtor; or

(c) is not an employee or proprietor or a partner:

(i) of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor; or

(ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm, in the last three financial years.

(1A) Where the committee decides to appoint the interim resolution professional as resolution professional or replace the interim resolution professional under section 22 or replace the resolution professional under section 27, it shall obtain the written consent of the proposed resolution professional in Form AA of the Schedule-I .

(2) An interim resolution professional or a resolution professional, as the case may be, shall make disclosures at the time of his appointment and thereafter in accordance with the Code of Conduct.

(3) An interim resolution professional or a resolution professional, who is a director or a partner of an insolvency professional entity, shall not continue as the interim resolution professional or resolution professional, as the case may be, in a corporate insolvency resolution process, if the insolvency professional entity or any other partner or director of such insolvency professional entity represents any other stakeholder in that corporate insolvency resolution process.

RELATED PROVISIONS UNDER IBC

Appointment and Tenure of Interim Resolution Professional (IRP)

Section 16 of the Code provides for the Appointment and Tenure of Interim Resolution Professional (IRP) as follows –

(1) *Who appoints IRP:* The Adjudicating Authority shall appoint an interim resolution professional on the insolvency commencement date.

(2) *Appointment of IRP in case of application made by financial creditor or corporate applicant:* Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

(3) *Appointment of IRP in case in case of application made by operational creditor*: Where the application for corporate insolvency resolution process is made by an operational creditor and-

(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

(4) *Recommendation by the Board:* The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

(5) *Term of IRP:* The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under section 22.

Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provides for submission of written consent of insolvency professional whose name is recommended for appointment as an Interim Resolution Professional (IRP) while filing application to initiate CIRP under section 7, 9 or 10 of the Code. It states that:

(1) The applicant, wherever he is required to propose or proposes to appoint an insolvency resolution professional, shall obtain a written communication in Form 2 from the insolvency professional for appointment as an interim resolution professional and enclose it with the application made under rules 4, 6 or 7, as the case may be.

(2) The application under sub-rule (1) shall be accompanied by a certificate confirming the eligibility of the proposed insolvency professional for appointment as a resolution professional in accordance

with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Management of Affairs of Corporate Debtor By Interim Resolution Professional

Section 17 of the Code provides for the management of affairs of corporate debtor by interim resolution professional i.e., powers and duties of IRP after appointment, as follows:

(1) From the date of appointment of the interim resolution professional, -

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

(2) The interim resolution professional vested with the management of the corporate debtor, shall-

(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified; and

(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

In the case of *Pooja Menghani vs. Insolvency and Bankruptcy Board of India & Anr ,* judgement dated November 20, 2023, Hon'ble High Court of Delhi inter alia observed that Section 17 of the IBC which deals with management of affairs of corporate debtor by interim resolution professional stipulates that from the date of appointment of the interim resolution professional, the management of the affairs of the corporate debtor shall vest in the interim resolution professional and the powers of the board of directors or the partners of the corporate debtor shall stand suspended and will be exercised by the interim resolution professional. It also stipulates that the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional. It also stipulates that the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

Section 18 of the Code enumerates "Duties of interim resolution professional. According to it, the interim resolution professional shall perform the following duties, namely: -

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to –

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified.

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board

Explanation. – For the purposes of this section, the term "assets" shall not include the following, namely: -

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

Personnel to Extend Co-operation to Interim Resolution Professional

Section 19 of the Code requires personnel to extend co-operation to interim resolution professional.

(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

(3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.

Management of Operations of Corporate Debtor as Going Concern

Section 20 of the Code mandates IRP to run management of operations of corporate debtor as going concern.

(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority-

(a) to appoint accountants, legal or other professionals as may be necessary;

(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property. It is provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt;

(d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and

(e) to take all such actions as are necessary to keep the corporate debtor as a going concern.

Section 5(15) of the Code defines "interim finance" which means any financial debt raised by the resolution professional during the insolvency resolution process period or by the corporate debtor during the pre-packaged insolvency resolution process period, as the case may be[and such other debt as may be notified.

Section 21 of the Code imposes duty on IRP to constitute "Committee of creditors – It states that the interim resolution professional (IRP) shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

If required by the committee of creditors at any time during the corporate insolvency resolution process, the resolution professional shall make available any financial information so required within a period of seven days of such requisition.

Appointment of resolution professional. – Section 22 of the Code provides for the appointment of resolution professional in the first meeting of the committee of creditors (CoC) in following ways:

(i) *When CoC resolves to appoint IRP as resolution professional or replace IRP by another resolution professional:* The committee of creditors, may, in the first meeting, by a majority vote of not less than sixty-six per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(ii) *When CoC resolves to continue IRP as resolution professional: S*ubject to a written consent from **the interim resolution professional in the specified form**, it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority.

(iii) *When CoC resolves to replace the interim resolution professional:* It shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional along with a written consent from the proposed resolution professional in the specified form.

(iv) *Forwarding name of new proposed RP to the AA:* The Adjudicating Authority shall forward the name of the resolution professional proposed to replace IRP to the Board for its confirmation and shall make such appointment after confirmation by the Board.

(v) *IRP to continue as RP:* Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional

Resolution Professional to Conduct Corporate Insolvency Resolution Process

Section 23 of the Code provides for that subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period:

It further provides that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority.

The section also states that the resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.

It also requires the interim resolution professional to provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional in case of any appointment of a resolution professional in lieu of interim resolution professional by committee of creditors under sub-sections (4) of section 22,

Meeting of Committee of Creditors

Section 24 of the Code provides that all meetings of the committee of creditors shall be conducted by the resolution professional. Sub-section (3) provides that the resolution professional shall give notice of each meeting of the committee of creditors to

(a) members of committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5);

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

It also casts a duty on the resolution professional that he shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

Duties of Resolution Professional

Section 25 of the Code lists out the mandatory duties of resolution professional as follows:

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -

- (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
- (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;
- (c) raise interim finances subject to the approval of the committee of creditors under section 28;
- (d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and (k) such other actions as may be specified by the Board.

Regulation 3A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for assistance and cooperation by the personnel of the corporate debtor as follows:

(1) *Duty to take custody and control:* The interim resolution professional or resolution professional, as the case may be, shall take custody and control as specified under this regulation from the personnel of the corporate debtor,its promoters or any other person associated with the management of the corporate debtor as the case may be, of the following:-

(a) **the records of information** relating to the assets, finances and operations of the corporate debtor referred in clause (a) of section 18 and such other information required under regulation 36;

(b) **the assets recorded in the balance sheet** of the corporate debtor or in any other records referred in clause (f) of section 18.

(2) *Obligation of personnel/promoter etc. to provide list of assets and records while handing over their custody and control:* The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall provide to the interim resolution professional or resolution professional, as the case may be**, a list of assets and records** while handing over their custody and control, and the interim resolution professional or resolution professional may, after taking such custody and control, if deemed necessary, identify person(s) in whose possession these assets and records will be held.

(3) *Duty of IRP/RP to prepare list of assets and records:* Where any asset or record has not been handed over or the list has not been provided under sub-regulation (2), the interim resolution professional or resolution professional, as the case may be, shall himself prepare a list of assets and records while taking custody and control of assets and records, and the interim resolution professional or resolution professional may, after taking such custody and control, if deemed necessary, identify person(s) in whose possession these assets and records will be held.

(4) *Signing of list of assets and records:* Each list of assets and records under sub-regulation (2) and (3) shall be signed by the parties present and by at least two individuals who have witnessed the act of taking control and custody of such assets and records.

(5) *Requisition by IRP/RP for information required under the Code but not handed over:* The interim resolution professional or resolution professional, as the case may be, shall requisition from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case maybe, the information relating to the assets, finances and operations of the corporate debtor referred in clause (a) of section 18 and such information required under regulation 36 which were required to be maintained by the corporate debtor but have not yet been handed over.

(6) *Requisition by IRP/RP for assets in records but not handed over:* The interim resolution professional or resolution professional, as the case may be, shall requisition from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case maybe, the assets which are recorded in the balance sheet or in any other records referred in clause (f) of section 18 and whose custody has not been handed over.

(7) An application made under sub-section (2) of section 19 in respect of failure to provide any asset or record as requisitioned under the Code and this regulation, shall show presence of such asset or record in the notice of requisition and absence of such asset or record in the list of assets and records taken in control and custody under sub-regulation (2) and (3).

Regulation 4 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for right of Interim Resolution Professional (IRP)/Resolution Professional as follows:

(1) Access to Books: Without prejudice to section 17(2)(d), the interim resolution professional or the resolution professional, as the case may be, may access the books of account, records and other relevant documents and information, to the extent relevant for discharging his duties under the Code, of the corporate debtor held with- (a) depositories of securities; (b) professional advisors of the corporate debtor; (c) information utilities; (d) other registries that records the ownership of assets; (e) members, promoters, partners, board of directors and joint venture partners of the corporate debtor; and (f) contractual counterparties of the corporate debtor.

(2) Duty of the personnel to provide information to IRP/RP: The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall provide the information within such time and in such format as sought by the interim resolution professional or the resolution professional, as the case may be.

The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for following duties of IRP/Resolution Professional:

4B. Disclosure of change in name and address of corporate debtor: Where a corporate debtor has changed its name or registered office address during the period of two years preceding the insolvency commencement date, the interim resolution professional or resolution professional, as the case may be, shall disclose all the former name(s) and registered office address(es) so changed along with the current name and registered office address in every communication, record, proceeding or any other document.

4C. Process e-mail: (1) The interim resolution professional shall open an email account and use it for all correspondences with stakeholders and in the event of his replacement by a resolution professional, shall handover the credentials of the email to him. (2) The resolution professional shall, in case of his replacement with another resolution professional or a liquidator, hand over the credentials of the email to the other resolution professional or the liquidator, as the case may be.

4D. **Operating separate bank account for each real estate project:** Where the corporate debtor has any real estate project, the interim resolution professional or the resolution professional, as the case may be, shall operate a separate bank account for each real estate project.

Replacement of Resolution Professional by Committee of Creditors

Section 27 of the Code lays down provisions for replacement of resolution professional by CoC during CIRP:

(1) Where, at any time during the corporate insolvency resolution process, the committee or creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

(5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

Preparation of Information Memorandum

Resolution Professional to prepare information memorandum: Section 29(1) of the Code states that the resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

Section 5(10) defines "information memorandum" which means a memorandum prepared by resolution professional under sub-section (1) of section 29.

Duty of the creditor to provide information to IRP/RP: Regulation 4(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 casts duty on the creditor that he/they shall provide to the interim resolution professional or resolution professional, as the case may be, the information in respect of assets and liabilities of the corporate debtor from the last valuation report, stock statement, receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers report, bank account statement and such other information which shall assist the interim resolution professional or the resolution professional in preparing the information memorandum, getting valuation determined and in conducting the corporate insolvency resolution process.

Resolution Professional to provide access of relevant information to the resolution applicant: Section 29 (2) states that the resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes- (a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading; (b) to protect any intellectual property of the corporate debtor it may have access to; and (c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.

Explanation. – For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified

Submission of resolution plan. – Section 30(2) of the Code states that it is the duty of the resolution professional to confirm that each resolution plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors and financial creditors, who do not vote in favour of the resolution plan in the manner specified in the section.

Submission of resolution professional to CoC: Section 30(3) provides that the resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

Duty of the resolution professional to submit approved resolution plan to AA: According to section 30(6), the resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

***Protection of action taken in good faith**. - Section 233 of the Code provides, "No suit, prosecution or other legal proceeding shall lie against an insolvency professional or liquidator for anything which is in done or intended to be done in good faith under this Code or the rules or regulations made thereunder."*

Enrolled and Registered Persons to act as Insolvency Professionals

Section 206 of the Code makes it mandatory for a person before rendering his services as insolvency professional under this Code

(i) to be enrolled as a member of an insolvency professional agency; and

(ii) registered with the Board.

i.e. both the conditions should be complied with before renderinng services as an Insolvency Professional.

Registration of insolvency professionals

Section 207(1) of the Code provides that to become an Insolvency Professional (IP), an individual shall first enroll with an Insolvency Professional Agency (IPA) as a member, and then register with the IBBI within such time, manner and after payment of fee as may be specified by the regulations.

Sub-section (2) of section 207 (2) vests in the Board power to specify the categories of professionals or persons possessing such qualifications and experience in the field of finance, law, management, insolvency or such other field, as it deems fit.

Functions and obligations of insolvency professionals

Section 208 of the Code prescribes functions and obligations of insolvency professionals:

(1) Where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take such actions as may be necessary, in the following matters, namely: –

- (a) a fresh start order process under Chapter II of Part III;
- (b) individual insolvency resolution process under Chapter III of Part III;
- (c) corporate insolvency resolution process under Chapter II of Part II;
- (ca) pre-packaged insolvency resolution process under Chapter III-A of Part II;
- (d) individual bankruptcy process under Chapter IV of Part III; and
- (e) liquidation of a corporate debtor firm under Chapter III of Part II.

(1A) Where the name of the insolvency professional proposed to be appointed as a resolution professional, is approved under clause (e) of sub-section (2) of section 54A, it shall be the function of such insolvency professional to take such actions as may be necessary to perform his functions and duties prior to the initiation of the pre-packaged insolvency resolution process under Chapter III-A of Part II.

(2) Every insolvency professional shall abide by the following code of conduct: –

- (a) to take reasonable care and diligence while performing his duties;
- (b) to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;
- (c) to allow the insolvency professional agency to inspect his records;
- (d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and
- (e) to perform his functions in such manner and subject to such conditions as may be specified.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) REGULATIONS, 2016

In exercise of the powers conferred by sections 196, 207 and 208 read with section 240 of the Insolvency and Bankruptcy Code, 2016, the Board has made the Regulations hereinafter called as the "IBBI (Insolvency Professionals) Regulations, 2016." These regulations came into force with effect from 29th November 2016.

The IBBI (Insolvency Professionals) Regulations, 2016 makes provisions for the examination and registration of Insolvency Professionals with the Insolvency and Bankruptcy Board of India. These regulations also make provisions for the disciplinary proceedings against the insolvency professional as well as prescribes the code of conduct for insolvency professionals. There are two schedules provided in the Regulation:-

(i) FIRST SCHEDULE [Regulation 7(2)(h)]: It provides for Code of Conduct for Insolvency Professionals.

(ii) SECOND SCHEDULE: It provides for the FORMS applicable w.r.t. Insolvency Professionals.

THE CODE OF CONDUCT

FIRST SCHEDULE [Under Regulation 7(2)(h)] - CODE OF CONDUCT FOR INSOLVENCY PROFESSIONALS

1. Integrity and Objectivity	**2. Independence and impartiality**	**3. Professional competence**
4. Representation of correct facts and correcting misapprehensions.	**5. Timeliness.**	**6. Information management**
7. Confidentiality	**8. Occupation, employability and restrictions**	**9. Remuneration and costs**
	10. Gifts and hospitality	

Regulation 7(2) of the IP Regulations provides that the registration of an IP is subject to the conditions that the IP shall:

A) at all times abide by the code, rules, regulations, and guidelines thereunder and the bye-laws of the IPA with which he is enrolled;

The First Schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides for the Code of Conduct for Insolvency Professionals to ensure best practices in the profession of Insolvency Professionals.

The code of conduct is explained as follows:

Integrity and Objectivity

Integrity and Objectivity are among the fundamental principles of ethics for Insolvency Professionals (IP). As per the First Schedule of the IP Regulations:

1. An Insolvency Professional (IP) must maintain integrity by being honest and straight forward in all professional relationships.

   Integrity envisages being straightforward and honest in all professional and business relationships. It implies fair dealing and truthfulness. The most important attribute of a professional for which he is accountable is integrity in character and conduct. Integrity, reputation and character are also pre-requisites for being considered as 'fit and proper' for registration as IP under regulation 4 of the IP Regulations. A profession is only as good as its members. Thus, it is necessary to ensure that a person with clean hands only can enter this profession to manage the operation of the corporate debtor and conduct the insolvency resolution process.

   Objectivity requires IP not to compromise professional or business judgements because of bias, coercion, conflict of interest or undue influence of others, whether directly or indirectly. The IP must visibly demonstrate his impartiality and lack of bias by

   - being transparent in all his interactions and decisions,
   - being collaborative and consultative with all participants of the Committee of Creditors, and
   - ensuring that all decisions are arrived at by active consensus and are not bull-dozed by a dominant participant or by the IP himself.

2. An Insolvency Professional (IP) must not misrepresent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession.

3. An Insolvency Professional (IP) must act with objectivity in its professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not.

3A. An insolvency professional must disclose the details of any conflict of interests to the stakeholders, whenever he comes across such conflict of interest during an assignment.

   This is required to avoid a threat to compliance with objectivity or other fundamental principles of the Code of Conduct. Timely disclosure of any conflict whether identified prior to appointment or during the performance of duties under the appointment to all stakeholders is critical. This might also require consent from Committee of Creditors to continue the appointment.

4. An insolvency professional appointed as an interim resolution professional, resolution professional, liquidator, or bankruptcy trustee should not itself acquire, directly or indirectly, any of the assets of the debtor, nor knowingly permit any relative to do so.

In ***Asset Reconstruction company Ltd. vs. Shivam Water Treaters Pvt Ltd, CP(IB) 1882/MB/2018, 16.01.2019***, NCLT, Mumbai Bench vide its order dated 2nd Jan, 2019 had clarified that IRP is acting as a Court Officer and any hindrance in the work of CIRP will amount to contempt of Court. The NCLT directed the promoter/ director, officials and auditor the Corporate Debtor Company to fully co-operate the RP in the completion of CIRP.

Further, in the aforesaid matter, the NCLT ordered that Police assistance to be given to the Resolution Professional so that the RP can take full control of the company without any interference from Ex-Director's or his officials. The Police Commissioner, Ahmadabad is directed to provide police assistance to RP and his team, so that the Resolution Professional can take control of the entire unit.

In ***Sanjay Kumar Ruia Vs. Catholic Syrian Bank Ltd. & Anr, Company Appeal (AT) (Insolvency) No. 876 of 2019, 11.09.2019***, NCLAT, New Delhi remitted the matter to the Liquidator, in view of the fact that liquidation proceeding has already been started. Hon'ble NCLAT further held that if the amount based on bills and ledger have been approved by the Committee of Creditors, the Liquidator cannot reject, the same being the 'resolution cost' and not claim of any creditor.

Hon'ble NCLAT disposed off the appeal and made it clear that the fee of the Resolution Professional and the cost incurred by Resolution Professional, will be treated as 'resolution cost'. Further, allowed the Liquidator to determine the claim under Section 40 of the Code. Once the amount is shown as 'fees' and 'resolution cost' the same to be paid in terms of Section 53 of the Code.

In ***BMW India Financial Services Private Limited v. SK Wheels Private Limited, MA NO. 2319/2019 in C.P. (IB) 4301/2018, 16.10.2019*** Hon'ble NCLT held:

*"*15. It is trite law that this tribunal has been provided with vast powers under section 60 (5) of the Code. Therefore, based on the above this bench is of the view that the actions or rather inaction on the part of the Resolution Professional 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. His actions are nothing more but an abuse of his dominant position.

18. This kind of injustice carried out by the Resolution Professional herein is completely unacceptable. 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."

In ***Ruchita Modi v. Mrs. Kanchan Ostwal & Anr, Company Appeal (AT) (Ins) No.1000 of 2019, 15.11.2019***, Hon'ble NCLAT held:

"As the IRP is functioning since 18th September, 2019 on admission of Section 9 Application, we compute the fees of IRP @ Rs.1,50,000/-. The IRP would be entitled to also recover CIRP costs as may have been incurred. The Appellant – for CD undertakes to contact IRP and pay fees as above and CIRP costs as may have been incurred by the IRP in 3 weeks, after deducting amount already received by IRP under the Impugned Order. In case IRP has any difficulty regarding CIRP costs, he would be entitled to move the Adjudicating Authority and the Appellant will be bound to pay the CIRP costs concerned, as may be directed by Adjudicating Authority."

Hon'ble NCLAT vide its order dated 04.11.2019 set aside the impugned order dated 18th September, 2019 passed by NCLT, Jaipur bench for initiation of CIRP and disposed of application u/s 9 of the code as withdrawn. Further, NCLAT also directed that if there is default in payment in terms of the settlement, it will be open for the Operational Creditor to move to the Appellate Tribunal for recall of this Order and to revive the CIRP process against the CD"

Independence and Impartiality

5. An insolvency professional must maintain complete independence in its professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.
6. In cases where the insolvency professional is dealing with assets of a debtor during liquidation or bankruptcy process, he must ensure that he or his relatives do not knowingly acquire any such assets, whether directly or indirectly unless it is shown that there was no impairment of objectivity, independence or impartiality in the liquidation or bankruptcy process and the approval of the Board has been obtained in the matter.
7. An insolvency professional shall not take up an assignment under the Code if he, any of his relatives, any of the partners or directors of the insolvency professional entity of which he is a partner or director, or the insolvency professional entity of which he is a partner or director is not independent, in terms of the Regulations related to the processes under the Code, in relation to the corporate person/ debtor and its related parties.
8. An insolvency professional shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders entitled to distribution under sections 53 or 178 of the Code, and the concerned corporate person/ debtor as soon as he becomes aware of it, by making a declaration of the same to the applicant, committee of creditors, and the person proposing appointment, as applicable.

8A. An insolvency professional shall disclose as to whether he was an employee of or has been in the panel of any financial creditor of the corporate debtor, to the committee of creditors and to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

8B. An insolvency professional shall disclose its relationship, if any, with the corporate debtor, other professionals engaged by it, financial creditors, interim finance providers, and prospective resolution applicants to the insolvency professional agency of which he is a member, within the time specified hereunder.

Relationship of the insolvency professional with	Disclosure to be made within three days of
(1)	(2)
Corporate debtor	his appointment.
Registered valuers / accountants/ legal professionals/ other professionals appointed by him	appointment of the professionals.
Financial creditors	the constitution of committee of creditors.
Interim finance providers	the agreement with the interim finance provider.
Prospective resolution applicants	the supply of information memorandum to the prospective resolution applicant.
If relationship with any of the above, comes to notice or arises subsequently	of such notice or arising

8C. An insolvency professional shall ensure disclosure of the relationship, if any, of the other professionals engaged by it with itself, the corporate debtor, the financial creditor, the interim finance provider, if any, and the prospective resolution applicant, to the insolvency professional agency of which he is a member, within the time specified as under:

Relationship of the other professional with	Disclosure to be made within three days of
(1)	(2)
Insolvency professional	the appointment of the other professional.
Corporate debtor	the appointment of the other professional.
Financial creditors	constitution of committee of creditors.
Interim finance providers	the agreement with the interim finance provider or three days of the appointment of the other professional, whichever is later.
Prospective resolution applicants	the supply of information memorandum to the prospective resolution applicant or three days of the appointment of the other professional, whichever is later.
If relationship with any of the above, comes to notice or arises subsequently	of such notice or arising.

Explanation: For the purposes of clause 8B and 8C above, 'relationship' shall mean any one or more of the following four kinds of relationships at any time or during the three years preceding the appointment of other professionals:

Kind of relationship	Nature of relationship
(1)	(2)
A	Where the insolvency professional or the other professional, as the case may be, has derived 5% or more of his / its gross revenue in a year from professional services to the related party.
B	Where the insolvency professional or the other professional, as the case may be, is a shareholder, director, key managerial personnel or partner of the related party.
C	Where a relative (spouse, parents, parents of spouse, sibling of self and spouse, and children) of the insolvency professional or the other professional, as the case may be, has a relationship of kind A or B with the related party.
D	Where the insolvency professional or the other professional, asthe case may be, is a partner or director of a company, firm or LLP, such as, an insolvency professional entity or registered valuer, the relationship of kind A, B or C of every partner or director of such company, firm or LLP with the related party.

8D. An insolvency professional shall ensure timely and correct disclosures by it, and other professionals appointed by it and shall provide a confirmation to the insolvency professional agency of which he is a professional member to the effect that the appointment, if any, of every other professional has been made at arms' length relationship.

9. An insolvency professional shall not influence the decision or the work of the committee of creditors or debtor, or other stakeholders under the Code, so as to make any undue or unlawful gains for itself or its related parties, or cause any undue preference for any other persons for undue or unlawful gains and shall not adopt any illegal or improper means to achieve any mala fide objectives.

In the case of ***State Bank of India Vs. M/s. Metenere Ltd., C.P. No.IB-639(PB)/2018*** an appeal was preferred by State Bank of India, financial creditor against the order of Hon'ble NCLT wherein it was observed that there is an apprehension of bias against the appointment of proposed Interim Resolution Professional, as he was ex-employee of financial creditor and has been drawing pension from the financial creditor. Therefore, Hon'ble NCLT directed financial creditor to substitute name of Interim Resolution Professional.

Hon'ble NCLAT held that:

"the Adjudicating Authority was perfectly justified in seeking substitution of Mr. Shailesh Verma to ensure that the 'Corporate Insolvency Resolution Process' was conducted in a fair and unbiased manner. This is notwithstanding the fact that Mr. Shailesh Verma was not disqualified or ineligible to act as an 'Interim Resolution Professional'. Viewed thus, we find no legal flaw in the impugned order which is free from any legal infirmity and has to be upheld. It goes without saying that the Appellant- 'Financial Creditor' should not have been aggrieved of the impugned order as the same did not cause any prejudice to it."

The Disciplinary Committee of IBBI vide an order dated November, 2019 found that an Insolvency Professional:

- Failed to make disclosures with respect to appointment of an LLP (in which he was a partner) as an IPE contravening the directions under the Circular issued by IBBI;
- Allowed charging fee of Rs. 12,09,90,185/- payable to lender's legal counsel as an IRPC and abdicated his authority in favour of CoC. He paid expenses of third party from CD and included in IRPC. He deliberately in connivance with some stakeholders squandered the assets (money) for unlawful purpose;
- Shared the fee, which can be paid only to an individual acting as an IP, with an LLP (in which he was a partner) against the provisions of the Code and the Regulations.

The Disciplinary Committee of IBBI observed that there was understanding between CoC and RP to contravene a law and willingness to remedy the situation only if they are caught. Thus, the RP has deliberately compromised his independence. The Disciplinary Committee Imposed penalty of ten percent of the RP's fee and Directed the RP to make good the loss by securing reimbursement and deposit the amount of Rs. 12,09,90,185/- in the account of Corporate Debtor.

Professional competence

10. An insolvency professional must maintain and upgrade his professional knowledge and skills to render competent professional service.

Insolvency professionals play the role of regulator's 'eyes and ears' into the workings of the assignments and thus shoulder immense responsibility and are accountable not only to the immediate user of their services but also to a wider stakeholder group, including regulators and the society as a whole.

Surrender of certificate of registration.

Regulation 10A providing for surrender of certificate of registration by an Insolvency Professional as follows:

- An insolvency professional may surrender its certificate of registration by making a request to the Board, in writing along with the certificate of registration in original.
- If the Board is satisfied, it may accept the request for surrender of certificate of registration within thirty days of its receipt and upon acceptance, the registration of such insolvency professional shall stand cancelled.
- On and from the date of cancellation of certificate of registration, the concerned person shall not represent itself to be a holder of the certificate for carrying out the activity for which such certificate had been granted.

Representation of correct facts and correcting misapprehensions.

11. An insolvency professional must inform such persons under the Code as may be required, of a misapprehension or wrongful consideration of a fact of which he becomes aware, as soon as may be practicable.
12. An insolvency professional must not conceal any material information or knowingly make a misleading statement to the Board, the Adjudicating Authority or any stakeholder, as applicable.

    During the corporate insolvency resolution process (CIRP) either on the own analysis of the resolution professional (RP) or on the forensic audit report submitted by the forensic auditor, the RP may become aware of any misapprehension or wrongful consideration of any fact. In that case, as per the code of conduct, the RP is expected to duly inform the same to the concerned stakeholder. Also, while disseminating information to stakeholders like CoC, Resolution Applicant, IBBI etc. the RP shall not conceal any material information or make any misleading statements. As an Officer of the Court, the RP is expected to be unbiased and diligent.

Timeliness

13. An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan its actions, and promptly communicate with all stakeholders involved for the timely discharge of its duties.
14. An insolvency professional must not act with mala fide or be negligent while performing its functions and duties under the Code.

    Bye-law 13 of the Model Bye-laws of an IPA, as specified by the IBBI under Schedule to Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, states that an IP must perform duties as quickly and efficiently as reasonable, subject to the timelines under the Code

In the matter of ***M/s. Surendra Trading Company V. M/s. Juggilal Kamlapat Jute Mills Company Limited and Others, Civil Appeal No. 8400 of 2017***, the Hon'ble Supreme Court held that the timelines provided in sections 7, 9 and 10 of the Code, for deciding a matter within 14 days as well as the time to remove a defect within 7 days, are directory and not mandatory.

In the matter of ***Committee of Creditors of Essar Steel India Limited V. Satish Kumar Gupta & Ors, Civil Appeal No. 8766-67 of 2019***, the Hon'ble Supreme Court held that "ordinarily the time taken in CIRP must be completed within the time limit of 330 days from the insolvency commencement date, including the time taken in litigation process. However, in few cases where it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short time is left in completion of corporate insolvency resolution process beyond 330 days, and it would be interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/ or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days."

Information management

15. An insolvency professional must make efforts to ensure that all communication to the stakeholders, whether in the form of notices, reports, updates, directions, or clarifications, is made well in advance and in a manner which is simple, clear, and easily understood by the recipients.

15A. An insolvency professional shall prominently state in all its communications to a stakeholder, its (i) name, (ii) address, (iii) e-mail, (iv) registration number and (v) validity of authorisation for assignment, if any, issued by the insolvency professional agency of which he is a member.

16. An insolvency professional must ensure that he maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of its decisions and actions.

17. An insolvency professional must not make any private communication with any of the stakeholders unless required by the Code, rules, regulations and guidelines thereunder, or orders of the Adjudicating Authority.

18. An insolvency professional must appear, co-operate and be available for inspections and investigations carried out by the Board, any person authorised by the Board or the insolvency professional agency with which he is enrolled.

19. An insolvency professional must provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled.

20. An insolvency professional must be available and provide information for any periodic study, research and audit conducted by the Board.

Confidentiality

21. An insolvency professional must ensure that confidentiality of the information relating to the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times. However, this shall not prevent it from disclosing any information with the consent of the relevant parties or required by law.

In the matter of ***Rajputana Properties Pvt. Ltd. Vs. Ultra Tech Cement Ltd. & Ors.***, NCLAT vide its order dated 15th May 2018 held that the Resolution Professional is required to examine whether resolution plan confirm the provisions as mentioned therein but he cannot disclose it to any other person including Resolution Applicant(s), who has submitted the resolution plan. The resolution plan submitted by one or other Resolution Applicant being confidential cannot be disclosed to any competitor Resolution Applicant nor any opinion can be taken or objection can be called for from other Resolution Applicants with regard to one or other resolution plan.

In ***Re.: Vijay Kumar Jain Vs Standard Chartered Bank & Ors Civil Appeal No. 8430-2018 Order dated 31.01.2019****,* Hon'ble Supreme Court *inter alia* observed that - "It is clear that the resolution professional can take an undertaking from members of the erstwhile Board of Directors, as has been taken in the facts of the present case, to maintain confidentiality. The source of this power is Regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, read with paragraph 21 of the First Schedule thereto. This can be in the form of a non-disclosure agreement in which the resolution professional can be indemnified in case information is not kept strictly confidential."

"The resolution professional does not seek information at a meeting of the committee of creditors, which is what Section 24 is all about. The resolution professional only seeks information from the erstwhile Board of Directors under Section 29 before preparing an information memorandum, which then includes the financial position of the corporate debtor and information relating to disputes by or against the corporate debtor etc."

Occupation, employability and restrictions

22. An insolvency professional must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments.

    Clarification (Inserted by Notification No. IBBI/2021-22/GN/REG077, dated 22nd July, 2021 (w.e.f. 21.07.2021).: An insolvency professional may, at any point of time, not have more than ten assignments as resolution professional in corporate insolvency resolution process, of which not more than three shall have admitted claims exceeding one thousand crore rupees each.

22A. *Resignation by an Insolvency Professional:* An insolvency professional may resign from the assignment, subject to the recommendation of the committee of creditors in a corporate insolvency resolution process, consultation committee in liquidation process, the debtor or the creditor in the insolvency resolution process of personal guarantor to the corporate debtor, as the case may be, and the approval of the Adjudicating Authority. It is further explained that the insolvency professional shall continue to discharge his duties, functions and responsibilities till the approval of resignation by the Adjudicating Authority.

23. An insolvency professional must not engage in any employment when he holds a valid authorisation for assignment or when he is undertaking an assignment.

23A. Where an insolvency professional has conducted a corporate insolvency resolution process, he and his relatives shall not accept any employment, other than an employment secured through open competitive recruitment, with, or render professional services, other than services under the Code, to a creditor having more than ten percent voting power, the successful resolution applicant, the corporate debtor or any of their related parties, until a period of one year has elapsed from the date of his cessation from such process.

23B. An insolvency professional shall not engage or appoint any of his relatives or related parties, for or in connection with any work relating to any of his assignment.

    For the purposes of this clause, the insolvency professional which is an insolvency professional entity may engage or appoint its partners or directors, as the case may be, for or in connection with any work relating to any of its assignment other than work related to valuation and audit of the debtor.

23C. An insolvency professional shall not provide any service for or in connection with the assignment which is being undertaken by any of his relatives or related parties.

    Explanation.- For the purpose of clauses 23A to 23C, "related party" shall have the same meaning as assigned to it in clause (24A) of section 5, but does not include an insolvency professional entity of which the insolvency professional is a partner or director.

For the purposes of this clause, the insolvency professional which is an insolvency professional entity may provide any service, other than service related to valuation and audit, for or in connection with the assignment which is being undertaken by any of its partners or directors, as the case may be.

24. An insolvency professional must not conduct business which in the opinion of the Board is inconsistent with the reputation of the profession.

In the matter of ***IDBI Bank Ltd. v. Lanco Infratech Ltd, C.P.(IB)No. 111/7/HDB/2017,*** the Hon'ble NCLT Hyderabad Bench in its order dated 7th August, 2017 stated that "Therefore, we agreed with the submissions of the respondents considering his previous three assignments to large companies and the current corporate debtor itself is a large company we are of the prima facie view that the proposed IRP would not find sufficient time to act as IRP for the respondent company."

In the matter of ***Anil Goel v. LML Ltd., C P No. (IB) 55/ALD/2007 with CA No.73/2018***, the Hon'ble NCLT Allahabad Bench in its order dated 23rd March, 2018 stated that "......He is also appointed the Liquidator in another two matters..."

"In the case in hand, the Resolution Profession Process was to be completed within the extended period of CIRP, by dated 25.02.2018. But the Resolution Professional failed to submit the progress report/ the resolution plan within the statutory period i.e. 270 days. The Resolution Professional has filed this application on 19.03.2018, after the issuance of notice by order of this Tribunal dated 13.03.2018 for submission of progress report/ Resolution Plan against him. The RP was also directed to remain present in the Court in person on 19.03.2018. The above act of the RP shows that he was not careful in following the timeline prescribed under the Insolvency and Bankruptcy Code."

Remuneration and costs

25. An insolvency professional must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations.

25A. An insolvency professional shall disclose the fee payable to it, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by it to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

25B. An insolvency professional shall raise bills or invoices in its name towards its fees, and such fees shall be paid to it through banking channel.

25C. An insolvency professional shall ensure that the insolvency professional entity or the professional engaged by it raises bills or invoices in their own name towards their fees, and such fees shall be paid to them through banking channel.

26. An insolvency professional shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing its remuneration.

26A. An insolvency professional shall not accept /share any fees or charges from any professional and/or support service provider who are appointed under the processes.

27. An insolvency professional shall disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must endeavour to ensure that such costs are not unreasonable.

27A. An insolvency professional shall, while undertaking assignment or conducting processes, exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person complies with the applicable laws.

27B. An insolvency professional shall not include any amount towards any loss, including penalty, if any, in the insolvency resolution process cost or liquidation cost, incurred on account of non-compliance of any provision of the laws applicable on the corporate person while conducting the insolvency resolution process, fast track insolvency resolution process, liquidation process or voluntary liquidation process, under the Code.

In ***Anurag Nirbhaya Vs. Anuj Maheshwari & Ors, Order dated 14.10.2019, NCLT***, IRP claimed Rs. 12 Lakhs for the first month and Rs. 11 Lakhs per month for the period of rest of the two and half months and he was paid Rs. 6 Lakhs for the total period of three and half months. 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.

In ***Punjab National Bank Vs. Divyajyoti Sponge Iron Pvt. Ltd NCLT, Order dated 13.03.2018***, the AA took notice of fixation of exaggerated insolvency resolution cost, inclusive of fixation of fee of RP in a lump sum manner by the CoC without applying its mind as regards to the fate of CD, the volume, nature and complexity of CIRP. It is observed that it is time to have legitimate guidelines or regulation in this regard so as to safeguard and to ensure the prospects and revival of a dying CD not be at the highest cost which canned be affordable by the CD. It hoped that IBBI would frame necessary regulations/guidelines for fixation of fees and resolution cost by a RP.

An IP should not charge abnormally high fee in relation to the services: The Disciplinary Committee of IBBI found that an IP attempted to charge abnormally high fee in relation to the services. Besides, he acted malafide by seeking increase of his fee after approval of fee by the AA and displayed professional incompetence by using stale information for decision making. He, then IRP signed the term sheet with the applicant, who is not legally competent to appoint RP or fix his fee, and thereby attempted to deprive the CoC of its legitimate right to appoint a RP of its choice and fix his fee. The Disciplinary Committee suspended the registration of the IP for two years, directed the IP to undergo the pre-registration educational course and work for at least six months as an intern with a senior insolvency professional, at any time during the period of suspension.

Fee paid to the professionals appointed on the direction of CoC should not be included as IRPC: The Disciplinary Committee of IBBI observed that Despite the IBBI Circular dated 12.06.2018 clearly stating that Insolvency Resolution Process Cost (IRPC) shall not include any expense incurred by a member of CoC or a professional engaged by them, the RP charged the fee of lender's legal counsel from the Insolvency Resolution Process Cost. Resolution Professional, on the direction of COC, finalized the appointment of a Professional to conduct second forensic audit. The fees should have been borne by the CoC members themselves but the same was included as IRPC. The Disciplinary Committee suspended the registration of IP for six months, directed to secure reimbursement of the amount which was paid to lender's legal counsel and professional for conducting second forensic audit and charged to IRPC.

Gifts and hospitality

28. An insolvency professional, or his relative must not accept gifts or hospitality which undermines or affects his independence as an insolvency professional.

29. An insolvency professional shall not offer gifts or hospitality or a financial or any other advantage to a public servant or any other person, intending to obtain or retain work for himself, or to obtain or retain an advantage in the conduct of profession for himself.

CASE LAWS

In the case of *Pooja Menghani vs. Insolvency and Bankruptcy Board of India & Anr,* judgement dated November 20, 2023, Hon'ble High Court of Delhi inter alia observed that an Insolvency Professional performs very important functions in the insolvency resolution process of a company. An Insolvency Professional virtually takes over the company during the period it goes through the insolvency resolution process. An Insolvency Professional in fact becomes the heart and brain of the company under the insolvency resolution process and a person having slightest of disqualification cannot be permitted to be appointed as an Insolvency Professional otherwise the entire purpose of the IBC will get vitiated.

In ***Re: V Nagarajan Vs. SKS Ispat and Power Ltd.& Ors, Civil Appeal No. 3327 of 2020 order dated 22.10.2021****,* Hon'ble Supreme Court inter alia observed that "The Resolution Professional is responsible for ensuring the timeliness of the process and has to file several forms, as detailed under Regulation 40B, and explain all delays that occur in the intervening period, when filing the final Form H upon submitting a successful resolution plan under Section 30 of the IBC.

In ***Re.: Sandeep Khaitan, Resolution Professional for National Plywood Industries Ltd. Vs. JSVM Plywood Industries Ltd. & Anr. Criminal Appeal No.447 of 2021 Order dated 22.04.2021****,* Supreme Court *inter alia* observed that "With the appointment of Committee of Creditors, a Resolution Professional is to be appointed. The Resolution Professional is thereafter to conduct the resolution process and manage the operations. Section 23 (2) makes it clear that his power is the same as the powers of the Interim Resolution Professional. Undoubtedly, the Resolution Professional is bound to seek prior approval of the Committee of Creditors in matters covered by Section 28."

"The IRP/RP must take a decision guided purely by the object of the IBC and the provisions and the factual matrix."

"The role of the insolvency professional is neatly carved out. From the date of admission of application and the appointment of Interim Resolution Professional, the management of the affairs of the Corporate Debtor is to vest in the Interim Resolution Professional. With such appointment, the powers of the Board of Directors or the partners of the Corporate Debtor as the case may be are to stand suspended. Section 17 further declares that the powers of the Board of Directors or partners are to be exercised by the Interim Resolution Professional. The financial institutions are to act on the instructions of the Interim Resolution Professional. Section 14 is emphatic, subject to the provisions of sub section (2) and (3). The impact of the moratorium includes prohibition of transferring, encumbering, alienating or disposing of by the Corporate Debtor of any of its assets."

In ***Re.: Manish Kumar Vs. Union of India & Anr., Writ Petition (C) No.26 of 2020 with other writ petitions order dated 19.01.2021****,* Hon'ble Supreme Court *inter alia* observed that "The resolution professional has to examine each resolution plan received by him on the basis of the invitation made by the resolution professional under Section 25(h) and ascertain whether the plan is in conformity with the various criteria mentioned in Section 30(2) of the Code."

"The IRP may or may not continue as the Resolution Professional (RP) but a RP is, undoubtedly, to be appointed under the scheme of the Code. The management passes into the hands of the RP. Thereafter, depending upon the receipt of the Resolution Plan and its acceptability to the Committee of Creditors and finally the approval by the Adjudicating Authority of the Resolution Plan, which is approved by the Committee of Creditors, depends the Resolution of the Insolvency."

"In short, the show is run by the Resolution Professional, subject to the control of the Committee of Creditors."

In ***Re.: Arcelor Mittal India Private Limited Vs Satish Kumar Gupta & Ors. Civil Appeal Nos. 9402-9405 -2018, Order dated 04.10.2018****,* Hon'ble Supreme Court *inter alia* observed as:

"However, it must not be forgotten that a Resolution Professional is only to "examine" and "confirm" that each resolution plan conforms to what is provided by Section 30(2)."

"A conspectus of all these provisions would show that the Resolution Professional is required to examine that the resolution plan submitted by various applicants is complete in all respects, before submitting it to the Committee of Creditors."

"The Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors, who may or may not approve it. The fact that the Resolution Professional is also to confirm that a resolution plan does not contravene any of the provisions of law for the time-being in force, including Section 29A of the Code, only means that his prima facie opinion is to be given to the Committee of Creditors that a law has or has not been contravened."

"Section 30(2)(e) does not empower the Resolution Professional to "decide" whether the resolution plan does or does not contravene the provisions of law."

"Thus, the importance of the Resolution Professional is to ensure that a resolution plan is complete in all respects, and to conduct a due diligence in order to report to the Committee of Creditors whether or not it is in order."

"Even though it is not necessary for the Resolution Professional to give reasons while submitting a resolution plan to the Committee of Creditors, it would be in the fitness of things if he appends the due diligence report carried out by him with respect to each of the resolution plans under consideration, and to state briefly as to why it does or does not conform to the law."

LESSON ROUND-UP

- The significance of role of Insolvency Professional has been summed up in the BLRC Report, Volume 1-Rationale for the Code.
- Regulatory framework for Insolvency Professionals is governed by(i) the IBC,2016 (ii) the IBBI(CIRP) Regulations,2016 (iii)the IBBI (IP) Regulations,2016 (iv) the IBBI (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (v) The IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 (vi)The IBBI (Inspection and Investigation) Regulations, 2017.
- The Resolution Professional (RP) holds a central position in conducting the CIRP and his role is vital to the efficient operation of the resolution process. The RP acts as a bridge between the debtor and the creditor and plays a significant role in aligning the interests of the CD with those of the creditors. The RP is appointed as an officer of the AA to conduct the resolution process and is vested with various statutory duties and powers. It is the RP who communicates with AA on behalf of CoC.
- An IP is a person who is enrolled with an IPA as a member and registered with the IBBI after qualifying Limited Insolvency Examination. Any eligible person having the required experience and qualifications including a chartered accountant, cost accountant, company secretary, advocate, managerial person can seek registration with an IPA and IBBI after meeting the requirements of the regime.
- The Code has provided for a two-tier regulation of IPs: - (i)The first-tier regulation of IPs is steered by the IPAs who administer the registration of IPs and promote and supervise their continuous development (ii)The second-tier regulation is steered by the IBBI which maintains a panel of IPs who have no disciplinary proceedings pending or against them and who hold Authorisation for Assignment or consented for assignments.
- An insolvency professional shall be eligible to be appointed as an interim resolution professional or a resolution professional, as the case may be, for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.
- The name of the insolvency professional proposed to be appointed as IRP is mandatory in case application to initiate CIRP is filed by financial creditor and corporate applicant while the same is optional for operational creditor. AA appoints the proposed insolvency professional as IRP only if Board confirms that there are no disciplinary proceedings pending against that insolvency professional.
- The management of CD is vested in IRP from the date of his appointment and then in RP.
- Duties and powers of the IRP and RP are well defined in the regulatory framework governing Insolvency Professional as stated above. It includes duty to constitute CoC, conduct meetings of the CoC, run CD as a going concern etc.
- The regulatory framework of IP also cast obligation on personnel of CD and creditors to extend full co-operation and give all requisite information to IRP/RP to facilitate him to conduct CIRP.
- CoC is vested with power to appoint same IRP as RP in its first meeting or to replace IRP with another RP as well as to replace RP during the tenure of CIRP.
- First Schedule of the IBBI (IP) Regulations, 2016 lays down Code of Conduct for Insolvency Professionals.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation).

1. What is the eligibility criterion for an individual to become Insolvency Professional?
2. Who is liable to pay fee to IRP in case of non-cooperation by creditors as well as Operational creditor (applicant on whose application CIRP was initiated) leading to failure to constitute Committee of Creditors and thereby leading to application u/s 60 by IRP for termination of CIRP, seeking his discharge from duties as IRP and reimbursement of costs for duties performed? Decide with reference to case.
3. State the role of Disciplinary Committee constituted by IBBI under the Code?
4. State the provision of surrender of authorization for assignment by an Insolvency Professional?
5. Discuss the duties of Resolution Professional under the IBC.

REFERENCES

- IBBI Handbook on IP
- IBBI 2019 Handbook
- IBBI Newsletter Jan-March 2023
- ICSIIIP Journal Feb 2023