

Help Us to Serve You Better

Guidance on Common Issues Observed by IIIPI During Monitoring/Inspections of IPs

(.....Continued from the previous edition)

1.13 Observations related to Managing the operations of the CD:

Observation	Relevant Provisions of Law	Remarks
<p>i. It has been observed that the admission order of CIRP was received late by the IP and during that time suspended board of management made bank transactions. It reflects that the operations were still being managed by the suspended board of management.</p> <p>ii. It has been observed that in the absence of any detailed scope provided/maintained for the responsibilities of the CEO continuing during the CIRP period on a salary basis, it appears the role of the CEO during CIRP was the same as before Pre- CIRP without changing the authority to himself. It seems there is dereliction of duty by RP in managing the affairs of the CD.</p> <p>iii. No change in signatory of accounts to IRP/RP himself and allowing the previous Management/ KMP to remain the signatory</p> <p>iv. Authorizing IRP/RP'S team member to be one of the signatory for bank transactions on his behalf without obtaining any delegation of Authority U/S 28 from COC.</p> <p>v. Non placement of the agenda on operational status of the CD , Non placement of Reports, cash flow etc for the operations of the CD</p> <p>vi. IP was not continuing till order of withdrawal/ settlement.</p>	<p>i. Section 14, 17(1) and Section 19(1) of the Code</p>	<p>i. Insolvency professionals (IPs) shoulder significant responsibilities during the moratorium. Cooperation from the suspended Directors and Key Managerial Personnel (KMP) is essential for managing the operations and maintaining the going concern status of the Corporate Debtor (CD). The IP is tasked with assuming control of assets and operations as mandated by the Code.</p> <p>ii. The IP shall present the operational status in every Committee of Creditors (CoC) meeting and place an agenda for the approval of operational costs before the CoC at each meeting. Additionally, the IP shall record the minutes, providing a summary of the decisions made with the approval of the CoC, especially those regarding major items mentioned in Section 28.</p> <p>The IP must always be able to demonstrate, through written contemporaneous records, all decisions taken, the reasons for those decisions, and the supporting information and evidence.</p> <p>iii. Instances where the IP delegates authority for pivotal tasks, such as managing the affairs by the KMPs, substantially raise concerns of outsourcing, thereby compromising the IP's crucial role. Secondly, the continuity of KMP tasks in the same capacity as before the initiation of Corporate Insolvency Resolution Process (CIRP) without documented evidence of IP oversight risks diluting decision-making authority. This not only signifies a dereliction of duty but also raises substantive concerns regarding the management of the corporate debtor's affairs.</p>

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1.14 Observations related to Model Timelines:

Observations	Relevant Provisions of Law	Remarks
<p>i. It has been observed that the IPs do not adhere with the timelines prescribed under the Code and regulations. For example: publication of public announcement, circulation of notices, minutes, invitation for expression of interest by prospective resolution applicants, appointment of valuers, determination of preferential, undervalued, fraudulent, and extortionate transactions, preparation and submission of IM to CoC etc. are largely being delayed by the IPs.</p> <p>ii. It has been observed that IP calculate the timelines from the date of receipt of order, however the same is to be calculated from the date of order i.e. ICD.</p> <p>iii. It has been observed timelines for filing CIRP-1 to CIRP-6 were not met or not filed.</p> <p>iv. CIRP-7 is not filed for activities defined in Regulation 40B(1A) of IBBI (CIRP) Regulations, 2016 and in cases where it is filed, all events are not captured or filing in every 30 days till completion of Activity is not done.</p> <p>v. It has been observed that CIRP-8 is not filed by the IPs.</p> <p>vi. It has been observed that the disclosures are not filed on timely basis or disclosed with wrong or incomplete information. While submitting relationship disclosures for registered valuers, disclosures are made in the joint names of valuers appointed, it is required to file disclosure for each valuer separately. While filing relationship disclosure of CoC, name of the creditors is not mentioned.</p> <p>vii. Failure to inform the COC about the various timelines and to present the appropriate agenda as prescribed. Additionally, the reasons for any deviations are not documented in the minutes with supporting documents</p>	<ul style="list-style-type: none"> • Regulation 40A, 40B of IBBI (Insolvency (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 • Clause 8A, 8B & 8C of Schedule I of IBBI (IP) Regulations, 2016 • Circular No. IBBI/IP/ 013 dated 12th June, 2018 	<p>i. <u><i>Delays in Model timelines may have substantive impact on the conclusion of the assignments as IBC envisage a timebound process</i></u></p> <p>ii. IPs must timely and correctly file the disclosures adhering to regulatory requirements. Time is the essence of IBC, therefore, IP must ensure the timelines mentioned under the Code and Regulations.</p>

1.15. Observations related to filing of Application with Adjudicating Authorities:

Observations	Relevant Provisions of Law	Remarks
<p>i. It has been observed that instead of filing list of creditors, report certifying constitution of committee with Adjudicating Authority, appointment of RP the same was sent over an email to NCLT.</p> <p>ii. Delay in filing of application for withdrawal before AA was observed.</p> <p>iii. It has been observed that IP faces noncooperation from CD but did not prefer timely application before AA under Section 19(2) to seek directions, cases are there</p> <p>iv. Delay in filing of application by IP for seeking an extension from AA.</p> <p>v. It has been observed that wherever IP faced circumstances not defined in law, IP did not approach AA to seek necessary directions.</p>	<ul style="list-style-type: none"> • Section 12, 19(2) and 60(2) of the Code. • Regulation 13(2)(d), 17 (1) and 30A of IBBI (CIRP) Regulations 2016. 	<p>i. Procedurally, deviations such as intimating the crucial information/ documents via email only to NCLT instead of formal filing raise concerns about adherence to statutory protocols.</p> <p>ii. Delays in filing withdrawal applications, seeking necessary directions in cases of non-cooperation, or obtaining extensions signify a failure to navigate legal frameworks effectively and may have a <u>substantive impact</u>.</p> <p>iii. IPs must prioritize procedural diligence, promptly seeking AA intervention when faced with uncharted circumstances.</p>

(to be continued...)

