

# **Indian Institute of Insolvency Professionals of ICAI (IIPI)**

## **Statement on Safeguarding the Rights, Privileges and**

### **Interest of the Insolvency Professionals**

The key factor in the entire Insolvency Resolution process is the Insolvency Professional (IP), himself. The challenges faced by an IP in working through a Corporate Insolvency Resolution Process (CIRP) cannot be minimised.

The capability of the IP is the fundamental asset which he takes into an arena fraught with multi-dimensional challenges. However, if this were to be supplemented with adequate support and proper safeguards, the quality of outcomes would be vastly superior.

The key hurdles to an effective execution of the role of an IP have been examined keeping in view existing policies and principal constraints. The responses have been tailored by the prevailing circumstances and may undergo revision following changes in the related laws, regulations, rules, processes, etc. Further, while it is the endeavour of IIPI to create an operating environment which is conducive to the effectiveness of IPs, many of the initiatives would depend for their success on the support provided by related entities.

The following policy responses are proposed and would be reviewed on the strength of feedback and operational changes:

#### **1. Right to proper and timely Remuneration:**

Issue: It is important that the Remuneration for the transaction should be unambiguously defined with the payment stages listed therein.

Response: IBBI has issued instructions on the charging of Fees and expenses by an IP for a CIRP. IIPI has also uploaded a statement on "Costs, Fees and Income" based on inputs from various sources, on its website. This would act as a guide for resolution of divergences in approach and disputes, often resulting in unreasonable delay or unilateral withholding of approval of payments by COC, OC, etc.

#### **2. Right to access of information:**

Issue: This is reported to be one of the major impediments to timely understanding of the ground level situation by the IP/IRP causing delays in preparation of the Resolution Plan.

Response: The provision of recourse has been provided u/s 19(2) & (3) of IBC. In addition, IBBI is understood to be in the process of issuing Letters to IPs to support requests for assistance, if necessary, in respect of their functions under CIRP.

### **3. Right to Personal/Physical Security:**

Issue: RP/IRP perceives Physical threat to self, family, staff or property.

Response: It has been proposed that Jurisdictional Police Station should immediately evaluate the position on an application made by the RP/IRP and initiate prompt action. Similarly, Adjudicating Bodies like NCLT/NCLAT may issue necessary directions for Police Assistance.

Apart from the above, mitigation of legal liability may be taken up voluntarily under the Personal Liability Insurance Scheme by IP/IRPs.

### **4. Right to Professional Freedom:**

Issue: Instances have been informally advised of pressure being brought to bear on an IP/IRP to act in a manner which may violate her/his professional judgment.

Response: This would need to be dealt with on a case to case basis with such instances being reported to the Adjudicating Authority.

### **5. Conflict of Interest**

Issue: Inadequate understanding of this issue has often led to imputations of malafides.

Response: A significant part of disputes in this regard can be resolved with proper learning, documentation, disclosure and enforcement of ethical processes.

IIPI has circulated a detailed paper on Conflict of Interests for Individuals and Firms. IBBI has also initiated holding of 1 day sessions on Ethics and Knowledge updation through IPAs using the support of BFSI.

In case of conflict of interest with a fellow professional /other stake holder, the Grievance Redressal/Disciplinary Mechanism is available.

**6. CoC Members/Staff of Corporate Debtor to be also bound by a Code of Conduct**

Issue: IRP/RP sometimes have to face hostile COC or OC/CD representatives.

Response: A Charter for CoC and Corporate Debtor has been suggested.

**7. Timely intimation of Adjudicating Authorities orders**

Issue: Uncertainty caused due to delay in notification and receipt of order.

Response: The delay and factors responsible for the same are to be assessed and a response based on the analysis is to be taken up with IBBI for evolving an appropriate solution.

**8. Insolvency Professionals to be given exposure in resolution process**

Issue: 1<sup>st</sup> time IRPs/RPs need guidance for proceeding with CIRP.

Response: The prospects of providing "internship" exposure to new IPs with experienced insolvency professionals is to be explored.

**9. Adherence to the Code of Conduct-FIRST SCHEDULE TO THE REGULATIONS**

Issue: With the hardening of approach to Code of Conduct violations by IBBI, there is a greater need to build awareness in this area.

Response: IIIPI has hosted the Code of Conduct on its website to provide easy access to Insolvency professional for reference.

The focal areas are

- (i) Integrity & objectivity,
- (ii) Independence & impartiality
- (iii) Professional competence,
- (iv) Representation of correct facts and correcting misrepresentation,
- (v) Observance of timelines,
- (vi) Ability in respect of information management,

- (vii) Observance of confidentiality,
- (viii) Occupation, employability & restrictions,
- (ix) Not to accept too many engagements,
- (x) Remuneration & costs - this should be in a transparent manner, and
- (xi) Not to accept gifts and hospitality.

The rights, privileges and interest of the Insolvency Professionals represent a changing matrix in the face of a fast evolving Insolvency Regime. As such, the above prescriptions are likely to undergo changes from time-to-time. In order to maintain their contemporary framework, these will be reviewed periodically.