



STUDY GROUP REPORT

ENHANCING ROLE OF SMALL-SIZED INSOLVENCY PROFESSIONALS IN INSOLVENCY RESOLUTION ECOSYSTEM

Study By
Indian Institute of Insolvency Professionals of ICAI (IIPI)



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FOREWORD

Indian Institute of Insolvency Professionals of ICAI (IIPI) is pleased to present the study group report on 'Enhancing Role of Small Sized Insolvency Professionals in Insolvency Resolution Ecosystem' prepared by a study group constituted in this regard. As normalcy is being restored in India, post-Covid, the insolvency profession needs to be more responsive as insolvencies are expected to rise. The report attempts to critically analyze the current dispensation, and suggest a way forward, with an eye on broad basing the profession while equipping the insolvency professionals, especially small sized, to face newer challenges. The underlying purpose is to enhance the role and scope of such professionals within the ecosystem.

I sincerely appreciate and thank CA. Subodh Kumar Agrawal, IP & Past President, ICAI for steering the group and providing his valuable guidance, along with members of the group who all worked hard to prepare the draft report.

I also appreciate the efforts put in by CA. Rahul Madan, Managing Director, IIPI and the secretariat of IIPI, for providing their technical and administrative support in bringing out this publication.

I am sure that the members of the profession and other stakeholders will find this publication immensely helpful.

Dr. Ashok Haldia,
Chairman, Governing Board,
Indian Institute of Insolvency Professionals of ICAI

Date: 22nd September, 2021

Place: New Delhi

PREFACE

The study group constituted by Indian Institute of Insolvency Professionals of ICAI (IIPI), on 'Enhancing Role of Small Sized Insolvency Professionals in Insolvency Resolution Ecosystem' is pleased to present this report.

The study group has attempted to develop a comprehensive understanding on the subject after elaborate consultation among intra-group and with other professionals/ stakeholders. With a view to broad base the profession and equip the insolvency professionals to face newer challenges, this report on behest of study group constituted by IIPI, focusses on enhancing role of smaller-sized IPs in the insolvency ecosystem. The report by study group attempts to analyze current practices and recommend certain constructive steps for improvement in future. The suggestions made in the report are towards providing inputs to the policy makers and stakeholders in this direction. For a focussed approach and ease of reference, the report has been divided into different topics having contemporary relevance.

The study group consisting of members with rich experience in managing CIRPs and liquidations, was further divided into two small sub-groups covering three different aspects of study as referred above. The group members relied on their personal experience and reached out to other professionals to identify the challenges involved.

The study group is thankful to Chairman, IIPI for providing an opportunity to develop the knowhow as above and providing his insights. The group is also thankful to Managing Director and officials of IIPI for providing valuable support to the said effort. In addition, the group expresses gratitude to several other professionals including experienced IPs, legal experts and other professionals who have contributed directly and indirectly to the development of this research report.

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Acronyms

AA	Adjudicating Authority (NCLT)
AFA	Authorization for Assignment
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
COC	Committee of Creditors
CPE	Continuing Professional Education
FC	Financial Creditor
IBBI	Insolvency and Bankruptcy Board of India
IBC/Code	Insolvency and Bankruptcy Code, 2016
IM	Information Memorandum
IP	Insolvency Professional
IPA	Insolvency Professional Agency
IFE	Insolvency Professional Entity
IRP	Interim Resolution Professional
IU	Information Utility
LLP	Limited Liability Partnership
MSME	Micro, Small, and Medium Enterprises
NCLT	National Company Law Tribunal
OC	Operational Creditor
PPIRP	Pre-Packaged Insolvency Resolution Process
RP	Resolution Professional

Background

IBC, 2016 has been in vogue for nearly five years and has provided effective succour to creditors in an expeditious manner. The code and processes therein have reasonably evolved and stabilised. The raging pandemic in the form of Covid 19 with the attendant adverse impact on economy has pushed many businesses, especially Micro, Small and Medium Enterprises (MSMEs) into distress. Now that India is witnessing and hoping for normalcy soon, the insolvency profession may need to be even more responsive as insolvencies are expected to rise, post lifting of suspension in March 2021. As per an estimate, the Non-Performing Assets (NPAs) levels of Scheduled Commercial Banks (SCBs) are expected to rise from 7.5% in September 2020 to nearly 14% in September 2021 aggregating to Rs.16 lac crore of NPAs. Among many measures implemented and yet to be implemented, by Government, of particular importance is Pre-Pack Insolvency framework which would allow stakeholders to negotiate terms out of court and achieve resolution faster. IBBI is also working on other frameworks including on Group Insolvency and Cross Border Insolvency. These would go a long way in streamlining resolution process in complex conglomerates on one end, and MSMEs on the other.

With a view to broad base the profession and equip the Insolvency Professionals (IPs) to face newer challenges, this report on behest of study group constituted by IIIPI, focusses on enhancing role of smaller-sized IPs in the insolvency ecosystem. The report provides a detailed account of current state of affairs and recommendations by the study group, for future dispensation, given the above backdrop. The suggestions made in the report can provide inputs to the policy makers and stakeholders in the direction of improving the insolvency resolution regime for the times to come. For a focussed approach and ease of reference, the report has been divided into different topics having contemporary relevance, as follows:

Topics Covered

- Restricting number of assignments for Insolvency Professionals;
- Guidelines for professional fees chargeable by Insolvency Professionals;
- International Experience;
- Empanelment guidelines for NCLT and SEBI panels;
- Empanelment by Financial Creditors;
- AFA Guidelines;
- CPE Guidelines;
- Development of New Professional Opportunities

The suggestions as mentioned in the report are recommendatory in nature leaving substantial discretion to IPs and other stakeholders to implement/ use depending upon the circumstances of each case.



Restricting Number of Assignments for Insolvency Professionals

In the context of restricting number of assignments, a direct reference can be drawn to clause 22 of Code of Conduct for IPs as provided in First Schedule to the Insolvency and Bankruptcy Board of India (BBI) (Insolvency Professionals Regulations), 2016, reproduced as follows:

“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 (placed vide amendment dated July 22, 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.”*

The rationale behind desirability to restrict number of assignments lies in the fact that an insolvency professional (IP) upon assuming the role of de facto Chief Executive Officer (CEO) of Corporate Debtor (CD) is required to perform multifarious duties including managing CD as Going Concern (GC), conducting Corporate Insolvency Resolution Process (CIRP), etc. This requires utmost care and attention, to be able to ensure timely resolution, as a first preference, while preserving the value of CD's assets. Other factors supporting such restrictions include requirement of IPs not to delegate or outsource their responsibilities, broad basing the assignments across larger number of professionals, etc. As a matter of fact, many banks while seeking Expression of Interest (EOI) from IPs, stipulate such restrictions.

However, while applying the (amended) code of conduct, IP or the regulator would not have entire information about the affairs of CD or issues involved in an assignment at the time of engagement. All these parameters would be known gradually during the process of handling of the assignment. In this context, the considerations as enumerated below, can be critical:

A. Estimation of Adequate Time Upfront

Time required for each assignment may be different based on the following factors specific to the assignment:

- i. Amount of claims in an assignment of CIRP or Liquidation as sensitivity of the assignment increases if the amount of claims is higher and vice versa.
- ii. In case the CD is operationally active, it requires much more time as compared to a closed entity.
- iii. Number of members of Committee of Creditor (CoC) also have direct impact on the time required for handling the assignment as IP would be required to interact and coordinate with the members for various matters.

- iv. Number of locations of the businesses and assets of the CD would have a large impact on the time required. IP is required to make multiple visits to all locations for custody, control, protection, preservation, inspection, management, operations, sale and finally handing over the assets to buyers or resolution applicant.
- v. Number of human resources working with CD as the issues related to workmen and employees need substantial time including arrangement for making payment of their wages and salaries and various other issues of Labour Law.
- vi. IP is under obligation to attend all litigation by or on the CD. The litigations may have started during pre-CIRP period or during CIRP period. IP needs to spend substantial time on all the litigations including engagement of lawyers, briefing to lawyers, and also attending in person court hearings.

B. Time/Resources, a function of Infrastructure available with Insolvency Professional

Time available with IPs depend upon the infrastructure available at their disposal and the extent of delegation possible by them. Infrastructure with IPs or support services through an Insolvency Professional Entity (IPE) can depend upon following parameters:

- i. Availability of trained human resources for various functions of the assignment such as communication, knowledge of IBC and regulations made thereunder, working knowledge of other related laws.
- ii. Availability of support staff for front end operations e.g., taking control and custody, making inventory, managing operations, security supervision, runners, etc.
- iii. Access to human resources who have experience of co-ordination with different professionals e.g., Registered Valuers, Transactional Auditors, Statutory and Internal Auditors, Accountants, Company Secretary, lawyers, etc.
- iv. Access to physical office infrastructure e.g., computers, printers, scanners, applicable software, conference room, meeting rooms, servers, internet, etc. and a dedicated IT resources who is able to handle all the requirements.
- v. Fully developed liquidation team for handling sale of assets, publicity for sale of assets, lead generation, lead development, documentation and finding of customer(s) for participation in the e-auction.

C. Stage when an Assignment can be Counted for the Purpose

There are various stages of an assignment before it is actually active, and work can be started. Following are the stages when the IP will provide his consent to take an assignment: -

- i. Participation in an EOI process generally undertaken by banks and financial institutions for selection of an IP.

- ii. Selection of an IP for an assignment by a Financial Creditor (FC) or Operational Creditor (OC) and issue of engagement letter including the fee and inclusions and exclusions from the fee. Selection is not certain and will depend upon various factors.
- iii. Submission of consent form to the creditor for attachment with the application u/s 7, 9 or 10 for commencement of CIRP.
- iv. A case may be assigned by Adjudicating Authority (AA) by appointing any IP as Interim Resolution Professional (IRP) or Resolution Professional (RP) or Liquidator in any case if his name is recorded in the panel of IPs as maintained by National Company Law Tribunal (NCLT) through IBBI.
- v. Submission of the Consent Form does not mean that the assignment would fructify, and IP may be appointed as IRP/RP or Liquidator because of following reasons: -
 - Application may be withdrawn by the applicant on account of settlement between the CD and the creditor;
 - Application may be rejected by the AA for technical or legal reasons;
 - Application may be accepted, and IRP may be appointed, however, the application can be withdrawn u/s 12A before the Committee of Creditors (CoC) is constituted;
 - IRP may be replaced by CoC, and another person is appointed as RP and the assignment for IRP is only for a limited period;
 - The application is withdrawn during CIRP with 90% voting by CoC and RP job is completed;

In the above context, it is pertinent to note that as per amendatory clarification in the Code of Conduct, only CIRP assignments and not Liquidation or pre-pack assignment, are covered by the quantitative restrictions. Moreover, capacity of IP has been prescribed to be that of the RP. Though strict and more desirable definition of 'Resolution Professional' excludes the assignment held as Interim Resolution Professional (IRP), an alternative interpretation lies in the definition of RP u/s 5 (27) of IBC which include IRP as well. Even the RP appointed in case of individual is excluded as the above is applicable only for CIRP. It is suggested that the legislative intent can be clarified in this regard.

The recommendation of the study group is that since the changes have been made recently, the same may continue for one year with the above-mentioned clarification and thereafter it may be reviewed.



Guidelines for Professional Fees Chargeable by Insolvency Professionals

Where the IP is engaged by the applicant to act as IRP, the fee is agreed upon between the applicant and the IP. In case, the fee of IRP is not approved in full or part, by CoC after the initiation of CIRP, the IP is entitled to get the fee from the applicant. If the name of the IP is taken from the IBBI panel of IPs made available to NCLT benches, then the fee of the IRP would be decided by the CoC. The CoC is required to take consent before deciding to appoint the existing IRP or any new IP as the RP. The RP cannot be appointed without such written consent. Even the IP cannot be appointed as Liquidator of a company without submission of a written consent to act as Liquidator.

Thus, fee for professional assignment as IRP/RP/Liquidator is decided by market forces, which is based on mutual professional judgement with regard to underlying efforts and complexity involved. Many large banks use pre-determined graded scale of fee while appointing the professionals. At times, Banks and Financial Institutions invite EOI along with fee quotation from the IPs and thereafter selections are being made based on Technical Bid and Financial Bid. However, this may lead to unhealthy competition and arbitrary fixing of fee. Moreover, there have been instances of undercutting by professionals, which goes against the ethos of orderly development of profession. In view of evolutionary stage, where roles of professionals are yet to be fully appreciated by other stakeholders and to support the cause of stand-alone or smaller-sized IPs, there is a merit in examining the need for having regulatory guidance on fixing the professional fee chargeable by IPs.

A. Views in favour of Guidelines for Professional Fee of IPs

- i. Some minimum fee for an assignment may be provided in the guidelines to resolve disputes in cases where the assignment is very small and the same has been assigned by NCLT Benches from the IBBI Panel of IPs.
- ii. Guidance may also be provided to fix maximum fee to assure to keep the CIRP cost under check.
- iii. The guidelines may provide for different fee scale for different size of assignments and the size may be determined based on the (a) Amount of Admitted Claims; (b) No. of locations of the assets and businesses of the CD; (c) Level of operations of the CD. Reference to past peak turnover of the CD may not serve as appropriate benchmark.
- iv. Although fee of the Liquidator is provided in regulation 4 of Liquidation Process Regulations, there may be a need for minimum fee of Liquidator in case the CD does not have any asset, or the assets are insufficient to justify fee of Liquidator.

B. Views against any Guidelines for Professional Fee of IPs

- i. IPs cannot be engaged without deciding fee payable as IRP or RP or Liquidator, except in some cases where the IRP is appointed by NCLT benches from the IBBI panel of IPs.
- ii. IPs quote their fee after understanding following parameters which determines the difficulty level in an assignment and would also help in assessing the time involvement:
 - a. Estimate of the amount of claims;
 - b. Understanding about number of locations of assets and businesses of the CD based on the discussions with the applicant and other information available on public platforms;
 - c. Level of operations of the CD at different locations and number of human resources working;
 - d. Estimated number of members of CoC;
 - e. Broad information about ongoing litigations in the CD;
- iii. Besides the above parameters, the fee of an IP is also influenced by his experience, similar cases handled, infrastructure at disposal, credibility in the market and trust of the CoC.
- iv. All the above factors influencing the amount of fee cannot be provided in the guidelines comprehensively.

Considering both sets of arguments as above, it was felt by the study group that regulatory guidance should be provided for minimum fee for special categories of assignment as IRP/RP/Liquidator as indicated above. However, for the cases outside such categories, the market forces should be allowed to decide the appropriate fee structure. Moreover, provisions may be introduced in the professional code of conduct to prevent instances of unhealthy competition by way of undercutting of fee.



International Experience

The insolvency regime has been in vogue in developed markets and can provide valuable insights in introducing best practices for regime in India. However, this does not take away the merit of attuning the regime as per requirements specific to local conditions in India, where the insolvency law is relatively new. It may be apt to draw key references and learnings from international experience, to strengthen the framework to build capacity of small-sized IPs, as indicated below:

- i. IPs may be exposed to international experience for expanding horizon, learning from the experiences of other jurisdictions, their standard operating procedures, their best practices, their code of conduct and ethics, their monitoring by concerned regulator(s), etc. For instance, in UK Insolvency Law, there is no restriction on number of assignments that can be managed by an IP. Likewise, professional fee is also left to judgement of the market forces.
- ii. Insolvency regime in India is still evolving and considering the conditions unique in Indian context and for orderly development of ecosystem, it may be desirable to adopt a calibrated approach, for instance, restrictions on number of assignments placed via recent amendment.
- iii. The exposure of IPs to international insolvency law, regulations, practices, guidelines, etc. would help in getting varied knowledge and benefit of international live case studies and thus lead to seamless implementation of insolvency law in India.
- iv. IPs can be exposed to international experience by collaborating with regulators, service providers, IPs, etc. of other jurisdiction for joint educational events such as seminars, webinars, research, courses and trainings.
- v. Group Insolvency and Cross-Border Insolvency frameworks is under consideration for implementation in India. International exposure and experience in this context, can be quite useful.



Empanelment Guidelines for NCLT and SEBI Panels

IBC, 2016 provides for appointment of IP as IRP by NCLT in cases where OC initiates the insolvency application without proposing the name of IRP. To manage the process timely, IBBI maintains a panel of IPs which is updated half-yearly based on experience, number of live assignments, locations etc. This panel is used by the NCLT benches for appointment of IRPs in those cases where no IRP is proposed by the applicant (OC). The issues and suggestions in respect of current dispensation are as follows:

- i. One of the eligibility criteria to participate in the said panel, is for IP to hold an Authorisation for Assignment (AFA) with validity till end of six months' tenor of panel's duration. The AFA process on the other hand is an independent one whereby AFA, akin to certificate of practice, is granted/renewed annually.
- ii. The period of twelve months for AFA starts on the date of approval by the concerned Insolvency Professional Agency (IPA). The AFA renewal can be applied by the professional only within 45 days' window prior to the date of maturity.
- iii. Combination of above mechanisms allows an IP to participate in the panel only once (for one lot of six months) in a year's time. In other words, even in the best-case scenario, an IP can participate in every alternative panel.
- iv. Such dispensation creates restrictions for those IPs who are willing to participate in the panel for the entire period. It may be mentioned that the requirement of such panel is applicable only for the 15-20% of the cases and for majority of cases the IPs are appointed by applicants.
- v. Moreover, even after getting included in the panel, the situation may arise that AFA is no longer valid on the day of appointment by NCLT. Such ineligibility may arise on account of surrender of AFA or issuance of show cause notice by IBBI or IPA, etc.

In the above backdrop, it is worthwhile to move to a more inclusive approach for panel formation, in the interest of broad basing the assignments across large number of IPs. As a suggestion, it is felt that the panel formation should be on online and real-time basis, allowing applicants to apply at will subject to the valid AFA as on date of application. The status of AFA can be automatically updated in such online system. The NCLT benches in turn would have access to real-time and updated set of lists. However, the IBBI can seek the application for empanelment and those interested can apply and being online and real-time, all those interested and having valid AFA shall be empanelled and can participate in all the panel.



Empanelment by Financial Creditors (FCs)

A. Current Practice of Empanelling IPs by FCs and Issues Faced

- i. The CoC is comprised, in majority of the cases, of Financial Creditors (FC) which mainly are Financial Institutions being the Banks (public sector, private, cooperative), and Non-Banking Finance Companies (NBFCs). The key decisions relating to appointment of IPs in various capacities being the RP or the Liquidator are taken by the CoC.
- ii. As per current practice, most of the Financial Institutions have made their respective panels of IPs. These institutions invite applications from IPs from time to time, setting their own eligibility criteria, calling for details of experience and documents, as may be decided internally by them.
- iii. Applications for empanelment are sought through advertisement in newspapers and/or websites of respective financial institutions. Unless IPs proactively watch out for such advertisements, they may miss out participation in empanelment process. Moreover, financial institutions carry out next cycle of panel formation, only after a year or two. Hence a large number of professionals may be left out in the process.
- iv. At the time of appointing an IP, an intimation is sent by the Financial Institution only to those included in their respective panels, seeking Expression of Interest (EOI) for appointment as IRP, RP, or Liquidator.
- v. Each IP is required to submit his technical bid detailing his and his team's experience and domain knowledge, in handling similar assignment in similar industry to which the CD belongs.
- vi. A commercial bid is also sought, detailing the fees and expenses to be incurred during the CIRP / Liquidation process. The quote on fee chargeable as IRP/RP may or may not be sought depending upon whether concerned financial institution has adopted a predetermined scale of fee.
- vii. The practice of empanelling IPs by individual financial institutions may not pass the test of independence of IPs and transparency in the appointment process.
- viii. Another related issue crops up when IRP, having been appointed by applicant or NCLT, is considered by CoC for continued appointment as RP in the same assignment. In the event such IRP is not an empanelled IP with one or more financial creditors, his/her appointment as RP may not be approved by CoC. This outcome may delay the timely completion of CIRP as the underlying objective.

- ix. The IPs while responding to the EOI floated by the Financial Institutions, are required to provide necessary information and documents. However, more often than not, they do not get feedback on the outcome or reasons for not getting selected, etc.

B. Proposed Improvements

The current dispensation as referred to in the previous para is more akin to process of empanelling valuers, advocates, auditors, etc. Unlike these professionals, IPs on the other hand do not represent financial creditors alone but are required to balance interests of all stakeholders in the public interest. Moreover, the IPs are a much smaller segment of professionals and subjected to stringent regulations without the possibility of exiting the CIRP by the IPs themselves.

In the interest of broad basing the assignments across a larger set of IPs and ensuring arm's length relationship between the financial institutions and the IPs, it is desirable that the individual empanelment by financial institutions may be discontinued. Instead, the banks/FIs can post the EOI with specific eligibility criteria on a common platform, for instance, IBBI's website. An IP who fulfils the eligibility criterion and is interested, should be allowed to apply online (preferably) or through email to the concerned financial institution.

Moreover, in the direction of aforesaid objectives, the following suggestions can prove to be effective:

- i. The selection of IPs should not be predominantly based on quotation for fee chargeable by IPs and should give due weightage to other qualitative factors as well.
- ii. Guidance on minimum fee payable to the IP, as suggested in the previous section.
- iii. Given the fact that IPs are seasoned professionals, the condition of their having experience of one or more assignments before consideration by financial institutions, can be relooked.
- iv. Reasons need to be recorded by CoC for change of IRP/RP, if any. This would ensure independence of IPs on one hand and avoid incurring additional time and cost in the process.



CPE Guidelines

An IP needs to continuously upgrade himself/herself through putting in efforts towards Continuing Professional Education (CPE) to remain relevant and provide value added services. The IBBI (IP) Regulations accordingly provide that an IP shall undergo CPE to keep his registration/AFA valid. IBBI, in consultation with the IPAs, issued the IBBI (Continuing Professional Education for Insolvency Professionals) Guidelines, 2019 on 6th August 2019. The objective is:

- (a) Continuing professional education is a planned and systematic attempt to introduce, review, or alter the competencies and thereby improve the performance of professionals. It meets post-registration professional development needs of IPs.
- (b) An IP needs to continuously upgrade himself through CPE to remain relevant and provide value added services.

Currently an IP is required to undertake a minimum of 10 credit hours of CPE in each calendar year and a minimum of 60 credit hours of CPE in each rolling block of three calendar years. However, an IP is not required to undertake any CPE in the calendar year in which he is registered.

Following suggestions can further strengthen the aforesaid objectives while ensuring ease of operations/process:

- i. To impart predictability to the continuous professional learning and to allow professionals to plan their schedules on regular basis, same day/time slots may be fixed every week or so for conducting CPE related training programs. The purpose of CPE hours is continuous learning. This would also greatly facilitate and bring efficiency in the process.
- ii. Given the fact that professionals are eligible to participate in programs organised by any IPA, it is desirable to have coordination between IPAs to avoid overlap of time and contents of the programs.
- iii. As IPAs insist on and have access to the attendance records of IPs while joining such programs, auto credit of CPE hours under intimation to the IP, is highly desirable. This would help dispensing with the requirement of IPs to apply for the same for every individual program.
- iv. As the IPAs play pivotal role in strengthening IP profession and building capacity of professional members, a mentorship program can be implemented by them allowing senior/experienced IPs to provide initial handholding to those joining profession afresh.



Authorization for Assignment (AFA) Guidelines

In terms of IBBI (IP) Regulations, effective from January 2020, an IP is required to apply for AFA, which is akin to certificate of practice. Such application is made to IBBI and is approved/managed by concerned IPA, without entailing any additional cost. The IP is allowed to accept an assignment only if his/her AFA is valid at that time. At the time of annual renewal of such AFA, IPs are required by IPAs to first meet all monitoring/compliance requirements as a pre-condition.

As such, the AFA renewal process works as a filtering process for non-compliances to be managed without undue delay. Moreover, as per extant regulations referred above, in the event of show cause notice (SCN) being issued against the IP by IBBI or the concerned IPA, his/her AFA certificate stands suspended automatically until the disposal of such SCN.

Proposed Improvements

- i. To reduce the compliance burden on the IPs, AFA may be made perpetual, like a Certificate of Practice (COP) for Chartered Accountants.
- ii. However, in order not to dilute the monitoring/compliance requirements, IPAs in line with current practice, may carry out annual and time-bound exercise to ensure compliances by concerned IP. Such exercise may be evenly spread across the year, instead of bunching up of AFA renewals as being followed currently. In the event of non-compliance, IPAs could then suspend AFA until all compliances are carried out satisfactorily. Effectively, for compliant IPs, annual exercise of renewing AFA would be dispensed with.
- iii. As a related compliance, IPs including those who do not have AFA or any assignment, are required to submit Half Yearly Return (HYR). In cases where assignments are held, the requisite information is anyway separately made available through filing of CIRP/disclosure forms. And in cases where no assignments are held, the HYR form carries nil information. Hence it is desirable that HYR filing may be discontinued. This would reduce compliance burden on IPs on one hand and bring down list of defaulters especially those having no assignments.



Development of New Professional Opportunities

Since 2016, the IBC as an economic beneficial legislation provides mechanism to rescue and resolve the distressed business as the first objective and only if the same is not expedient, provides as a last resort, mechanism for liquidation, recovery, and distribution of funds. The success of such resolution effort lies in time bound CIRP process while preserving or maximisation of assets' value and balancing the rights of multiple stakeholders participating in the process. IBC provides scope for revival of the CD from financial stress, by allowing the resolution plan submitted by the qualified Resolution Applicant (RA), the RP getting approved in the process monitored by AA viz. NCLT.

Currently the framework provides for resolution and liquidation of corporate persons besides individual in the capacity of Personal Guarantor (PG) to CDs. The Pre-Pack Insolvency Resolution Process (PIIRP) for MSMEs, 2021 has recently been notified which provides a special dispensation, mostly out of court, for MSME corporate persons. The frameworks for insolvency resolution of individuals (though already provided), Group Insolvency and Cross-Border Insolvency are in the works and yet to be notified. Efforts are also on for strengthening markets for distressed assets to be able to attract investments domestically and from offshore territories.

There are multiple roles, formal and informal, that IPs given their expertise, can assume in the areas related to restructuring and/or Liquidation of distressed businesses within current as well as future dispensations. For instance, recently the IPs have been allowed to be appointed as administrators under Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018.

Identifying such professional opportunities should be a continuous process to be followed by policy makers and stakeholders for broad basing the profession and professionals. To increase the professional opportunities for IPs, suggestions are as follows, divided in two categories:

A. Areas of New Professional Opportunities, Within Current Regime

- i. Advising stakeholders, where IP is not in conflict of interest, in respect of their roles in the CIRP/Liquidation processes, for instance,
 - a. Preparing Resolution Plan at the behest of Resolution Applicant;
 - b. Providing advice to other stakeholders, like CDs, OCs;
 - c. Advising CoC or any member of CoC;
 - d. Representing any FC/CoC Member in the CoC;
 - e. Acting as process advisor to the IRP / RP / Liquidator for the CIRP Process;

- ii. To provide professional services during the CIRP / Liquidation process, based on his/her other qualifications, such as an advocate, auditor, valuer or transaction/ forensic auditor.
- iii. To provide opinion in writing on any provision of IBC based on the facts and circumstances of the case, on query raised to them by any stakeholder.
- iv. To facilitate possession and disposal of assets under SARFAESI Act on behalf of a lender.

B. Areas of New Professional Opportunities, Subject to Regulatory Intervention

- i. To be appointed as Liquidator by Enforcement Agencies and PMLA for disposal of assets.
- ii. To function as Official Liquidator, on behalf of Hon'ble High Court, for matters before it.
- iii. To be appointed as Administrator in case of order passed in matter of Mismanagement under Companies Act, 2013.
- iv. To be appointed as Chairman to conduct committee meeting or scrutinizer in matters of Amalgamation and restructuring of the company or application U/s 230 of the Companies Act.
- v. To act as conciliator, mediator on the matters pertaining to restructuring, settlement, etc.



Summary

In nutshell, the study group report as above attempts to critically analyse the current dispensation and suggest a way forward, with an eye on broad basing the profession while equipping the IPs, especially small sized, to face newer challenges. The underlying purpose is to enhance the role and scope of such professionals within the ecosystem, in a fair and orderly fashion. The suggestions and recommendations across eight areas including restricting number of assignments, minimum fee for IPs, panel by FCs and NCLT, AFA/CPE guidelines, are aimed at providing level playing fields for all professionals while balancing the rights of different stakeholders. Moreover, an attempt has been made to identify and propagate newer areas for professionals to realise their potential, besides expanding the horizon of existing ones. The suggestions made in the report can provide inputs to the policy makers and stakeholders in the direction of improving the insolvency resolution regime for the times to come.





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