

Importance of Communication in Insolvency Processes



*Communication plays a pivotal role in the success of insolvency process. Almost all the communications whether they are meant for court, creditors, employees, and other stakeholder of the corporate debtor are either released by the resolution professional himself or on his behalf. Therefore, designing the communication for target audience, selecting the right channel and feedback analysis to assess the impact and need for communication is quite significant. Today, advancement in information technology has provided us several options in encoding messages with using a blend of text, photos, videos, and animation etc. Besides, a bouquet of media such as print, electronic, email, website, videoconferencing, social media, etc. are available in the market for insolvency professionals. One of the most important communication strategies of an IP is to be vigilant of the kind and standard of language and the body gesture while delivering messages from various forums. **Read to know more...***



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Introduction

The role of an Insolvency Professional (IP) in his/her capacity as an Interim Resolution Professional (IRP), Resolution Professional (RP), or Liquidator is often compared with that of a Chief Executive Officer (CEO) of a company. This is because immediately after being appointed by the Adjudicating Authority (AA), IP takes control of entire operations and business of a Corporate Debtor (CD). However, the job of a CEO of a CD does not stand comparable to that of a CEO of a flourishing company for it is akin to the captain of a sinking ship with a responsibility to rescue.

This responsibility has made the insolvency profession a highly multidisciplinary profession wherein an IP is required to possess a wide range of skills. In a very short span of 180 days (extendible to 270 days), an IRP/RP is required to take several decisions related to a wide range of stakeholders such as bankers, promoters, employees, suppliers, customers, contractors, taxpersons, entrepreneurs, evaluators, among others. Besides, s/he is also responsible for directly reaching out to these stakeholders, making them aware about the insolvency process, understanding their interests, protecting the assets of the CD, inviting

resolution plans, facilitating a successful resolution, distributing proceeds (as a liquidator) etc.

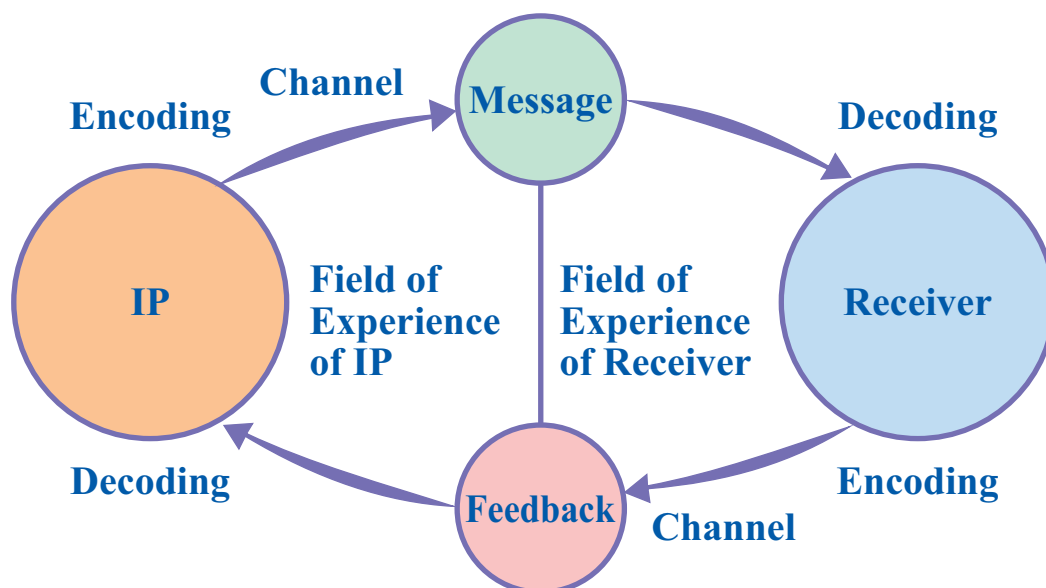
In this process the IRP/RP or Liquidator is required to communicate with various stakeholders and get their active support in the insolvency resolution process. Given the timeline prescribed by the Insolvency and Bankruptcy Code (IBC), 2016, and a wide range of stakeholders, communication becomes very crucial in entire insolvency process.

2. Communication Process

The importance of communication in our professional,

skill of the communicator (proponent and respondent), composing accurate and flawless messages and feedback analysis/interpretation. It provides equal status to both the communicators i.e., sender and receiver. Though, several other channels or media of communication like books, letters, inscription on stones, walls, caves, and metallic pillars etc. are available, communication was primarily face-to-face.

Innovation and development of various information technologies which started with the invention of telegram by the American inventor, Samuel F. B. Morse, in 1844, and telephone by Graham Bell in 1876. Thereafter, several



Graph: Communication Process in Corporate Insolvency

social, and personal life has been highlighted in what is considered by many as the first ever book of humans – the holy Rigved¹. Thereafter, ancient Indian scientists developed several theories and methodologies of communication which were used for interpersonal communication, group communication, and mass communication as well. In the Indian intellectual heritage, they are popular in the form of shastrarth, panchayats, plays, dance, and songs. The Indian approach to communication puts great emphasis on communication

other inventions in the field of communication technology such as television, computers, laptop, internet, mobile phones, internet, email, video conferencing etc. have brought phenomenal change in the field of communication studies. In line with these technological inventions, communication scientists have also presented various models of communication.

Initial models of communication were linear in nature which were based on the idea of sending messages from sender to receiver. The Osgood Shramm Model²,

¹ Rigved. 8.101.5

न यः सम्युक्षे न पुनर्हीयते न संवादाय रमते

तस्मात् नो अथ समुर्ते उरुभ्यतं बाहुभ्यां न उरुभ्यतं ॥

(Those who don't take interest in questioning, invoking or engaging in Samvad (regarding the Almighty); please protect us from such powers and also from any type of association with such powers)

² Osgood-Schramm Model:

<https://studymasscommunication.wordpress.com/2019/09/08/the-osgood-schramm-model/>

³ Binani, Sumit (2021): CIRP of Monnet Ispat & Energy Ltd., The Resolution Professional, October, p. 50-51.

presented by Wilbur Shramm and Charles Osgood in 1964, argues that communication is a two-way process. Thereafter, there has been an emphasis on understanding communication in wider perspective. Contemporarily, communication is explained as an exchange of meaningful messages from one person or group to the other person or

The Indian approach to communication puts great emphasis on communication skill of the communicator - composing accurate and flawless messages and feedback analysis and provides equal status to both sender and receiver.

group. These messages could be written, oral, visual, or multimedia. Thus, the process of communication involves seven major components:

- (a) **Sender or Communicator:** In the insolvency process, the IP acts as main communicator because most of the messages are drafted, finalized, and disseminated either by himself or by his support team on his behalf.
- (b) **Message:** The content of the message which could be in the form of text, audio, video, Power Point Presentation (PPT), Multimedia etc. Designing communication, is, therefore, very crucial in the entire process of communication. Furthermore, body language and behavior of the IP also matter a lot in delivering communication. Though experience of the communicator is of great significance in encoding or designing the communication, 10 Cs of effective communication³ may be applied to ensure messages are well articulated and properly constructed before they are disseminated. They are as follows:
 - (i) **Courteous:** Courteousness or politeness is the first step in all forms of communication. A courteous communicator can easily cover some of his mistakes while an arrogant one may face problems despite having more information, knowledge, and facilities for the stakeholders.
 - (ii) **Clear:** Communicator should be very clear about the purpose or objective of the communication. It is better to design separate communications for separate purposes. However, if the communication has several sub-objectives under a broad objective, they should be mentioned in different paragraphs or section but woven around a common central idea.
 - (iii) **Concise:** Conciseness means giving more information in a few words. There should not be any unnecessary word or sentence/s in the message/s. Besides, there should not be any scope for speculation which creates uncertainty of any kind among the target audience. Being a court officer, the IRP/RP is expected to talk about facts which should not express his personal prejudices or possibilities.
 - (iv) **Concrete:** It refers to being specific and meaningful. The vague messages do not portray any meaningful response to further effective communication.
 - (v) **Correct:** Correctness refers to correct grammar, punctuation, capital letters, and spellings in written communication and proper pause, stress, pitch, and emotion in oral communication.
 - (vi) **Coherent:** The words, facts, figures, and arguments in the message should be arranged in proper sequence to ensure a harmonious flow. This makes the message easy to grasp and conveys the intended meaning.
 - (vii) **Credibility:** The message should be framed in such a manner that it contributes to enhancing credibility of the insolvency resolution process, the insolvency profession, and the overall IBC regime.
 - (viii) **Consideration:** Viewing or analyzing significance of one's message from the perspective of target audience. Due consideration should be given when one is addressing the committee of creditors or when one is appearing in court.
 - (ix) **Creativity:** Creative presentation plays a very significant role in effective communication and helps the target audience to grasp the message easily. The IRP/RP should use graphs, pictures, ppt, videos, and other creative modes to facilitate effective communication.
 - (x) **Complete:** Communicator should cross check whether all the required information is provided

in the message or not. If it is oral communication, the communicator should address all the questions. In case the IRP/RP does not have an answer to any question, s/he should politely seek time and circulate the desired information among the target group/s.

- (c) **Channel or Medium:** Through which the messages are sent to the recipients such as email, WhatsApp, social media, video conferencing platforms, television, newspaper, official documents, etc. In this age of information technology, the IRP/RP has a wide range of channels for transmitting messages to the recipients or target groups. During the Covid-19 period, video conferencing has emerged as one of the most preferred channels of communication, and even the courts communicated via video conferencing. This use of information technology is also helpful to communicate with the ground team and supervising various units/offices of the company from a centralized location.
- (d) **Receiver:** The person who decodes or interprets the message. The sender of a message must, therefore, consider the impact his message will have on the receiver. A communication would be incomplete till it is received and acknowledged by the receiver; and interpreted and understood in the same context and meaning as expressed by the sender.

It is recommended that an IP uses diversified mode of communication such as periodic text emails, multimedia emails, e-newsletter, e-pamphlets, e-posters, audio messages, short videos, social media etc. to reach out to the target groups.

- (e) **Ambience:** Ambience plays an important role in communication. A conducive or favorable ambience may mask the deficiencies or flaws of message/s while a negative ambience may play spoilsport for the same message/s.
- (f) **Field of Experience:** Communicator and stakeholders both are influenced by their respective set of experiences, beliefs, background etc. The 'field of experience' matters a lot in

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drafting or encoding messages and their dissemination by communicator and their interpretation by the receiver or respondent.

- (g) **Barriers of Communication:** Field of experience or environment, background, beliefs of the sender and receiver all influence encoding and decoding of the messages. Besides, technical snags, faulty messages, improper presentation may also pose hurdles in the process of communication.

3. Stakeholders or Target Groups of Communication in Insolvency Process

Every message whether it is textual, visual, or spoken is meant for consumption of a person or group. The person or target group plays a great role in designing the communication strategy right from finalization of the message to selection of medium to dissemination and analysis of the feedback. Therefore, the IP should be very careful in choosing a suitable communication strategy for the target audience or group. The role of an IP in a Pre-Pack insolvency process starts earlier in comparison to the Corporate Insolvency Resolution Process (CIRP). However, all insolvency processes involve following similar audiences or target groups:

- (a) **Promoters/Management:** In case of Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs, the IP is required to work as a consultant for the promoter/s and creditor/s in finalizing a Base Resolution Plan (BRP). However, in the case of CIRP, the IP takes over the company from promoters and constitutes a Committee of Creditors (CoC) at its place. Therefore, the IP needs to be very cautious in his/her approach of communication with promoters and erstwhile management.
- (b) **Senior Officials of the CD:** Under the IBC, an IRP/RP is responsible for running the CD as Going Concern (GC). Therefore, the active support and confidence of senior officials

becomes very important. It's the responsibility of the IRP/RP to ensure that performing officials continue to work with the CD while negative minds don't misuse the opportunity to spoil or pollute the environment.

IRP/RP should be cautious and vigilant while communicating with media otherwise s/he will risk parting with confidential/proprietary information.

- (c) **Employees and Employee Unions:** It is recommended that the IP should also immediately communicate with the employees of his appointment and taking charge of the company to them. They should also be briefly explained about the insolvency resolution process. As soon as possible, the IRP should have a meeting either physically or through video conferencing with the employees at all the sites or units of the CD.
- (d) **Committee of Creditors (CoC):** The rules and regulations relating to the constitution of CoC are well defined in the IBC and deliberated through various judgements of NCLAT and the Supreme Court. IRP needs to be very conscious while inviting claims from creditors, and in admitting claims. After constitution of the CoC, the RP acts as a medium of communication between the CoC and rest of the stakeholders.
- (e) **Judiciary:** The insolvency process is conducted under direct supervision of the AA which is the concerned NCLT Bench of the area. The IRP/RP communicates with the NCLT, NCLAT, HC, and the Supreme Court through his lawyer and legal officials. As an officer of the court, the RP/Liquidator has a direct responsibility to be of able assistance to the Court. His applications, pleadings, submissions, and communications during hearings must be guided by the seven components of communication listed above.
- (f) **Customers:** Businesses depend on customers who get the product or services of the company directly or through intermediaries. Maintaining positive relationships with such third parties through trustworthy communication helps in

running the company as a going concern thereby resulting in value maximization.

- (g) **Contractors/ Vendors/ Suppliers/ Wholesalers/ Retailers:** Though very crucial in running the operations of the company, contractors/vendors/suppliers tend to stop working during the financial crisis due to delays in the payments. Some insolvency professionals have also mentioned about hostile situation and strike at plant locations by trade unions, transporters, dealers, and/or other market organizations. Threats, both physical and otherwise, have been made by trade unions/other third parties to members of the IRP/RP team. Therefore, maintaining continuous and amiable communication with a sympathetic and empathetic approach would enable a more harmonious interaction with such third parties.
- (h) **Local/ Dependent Population:** These problems often occur at manufacturing plants where they hire labourers on daily wage basis. If not handled properly, they may create security problems for the assets of the company and safety of employees. Companies allocate some funds for CSR (Corporate Social Responsibility) activities which are generally stopped during financial crisis. For example, Sumit Binani, the RP of Monnet Ispat & Energy Ltd. (MIEL), with due approval of the CoC, ensured that the CSR activities taken up by the company were continued. He established positive communication with organizations and continued financial support to health care facilities for nearby villages, schools and conducted training programs for the youths.
- (i) **Tax Authorities:** Though Section 14 of the IBC provides moratorium from tax and other liabilities of the company, tax authorities often send demand notices to the company during insolvency process. The RP should be very

⁴ Business Today (2021): Discom cannot terminate PPA with insolvent power company: SC, March 09 (<https://www.businesstoday.in/latest/economy-politics/story/discom-cannot-terminate-ppa-with-insolvent-power-company-sc-290388-2021-03-09>)

⁵ Tata Consultancy Services Vs. Vishal G. Jain, RP, S. K. Wheels Pvt. Ltd., Civil Appeal No. 3045 of 2020, Supreme Court (2021).

Careful in replying to those notices which otherwise may land in unnecessarily legal disputes. The RP should facilitate the provision of the information required by the authorities and remain respectful in all his communications.

The IP needs to maintain a balance between legality and simplicity so that the messages are interpreted by the target group in a desired manner.

- (j) **Operational Creditors:** OCs constitute a large group of stakeholders such as suppliers of raw materials, electricity suppliers, employees, tax authorities, government authorities etc. Communication becomes critical when trying to ensure continuity of goods and services that are essential in nature for the corporate debtor while the corporate debtor remains challenged in making timely payments for the same. There can be conflicting assessments on what are essential goods and services depending on the facts and circumstances. This is also reflected in two recent judgements^{4&5} of the Supreme Court. In my opinion, having a collaborative approach in communication, trying to solve the problem together and helping both, the corporate debtor, and the supplier, without seeking external intervention by the court would be a more effective communication method.
- (k) **Regulator (IBBI and IPA):** IPAs are required to provide mandatory information in the provided formats and forms to their respective Insolvency Professional Agency (IPA) and the Insolvency and Bankruptcy Board of India (IBBI). This information should be flawlessly drafted as even an iota of confusion may land the IRP/RP in trouble. Also importantly, all filings must be made in a timely manner within the timelines prescribed.
- (l) **International Communication:** If the CD has offshore offices/units, the IRP/RP is required to communicate with the authorities in foreign land. One must understand whether English must be the main means of communication in that part of the world, and where it is not, be accordingly

simple and lucid when communicating rather than using long complicated sentences.

- (m) **Media:** Though media does not play a direct role in all the insolvency proceedings, it influences perception of various stakeholders in high profile cases. The IRP/ RP should as far as possible, exercise restraint from communicating with the media during the insolvency resolution process. IRP/RP should be cautious and vigilant while communicating with media otherwise s/he will risk parting with confidential/proprietary information. This is because digging out sensitive pieces of information and exposing them in the public is considered merit in journalistic profession.

Where required to interact with the media, the insolvency professional must ensure that only correct factual information is provided to media. In case of any ambiguity in any information or in case of any misreporting of what the insolvency professional has communicated, clarifications should be needed to be issued without any loss of time.

- (n) **Miscellaneous Stakeholders:** If the company is listed in the stock market, the IRP/RP is required to regularly communicate with SEBI, BSE, and NSE etc. and keep them updated on the resolution process as mandated. In addition to the above, there may be other stakeholders depending on the field and profile of the company. For example, in the CIRP of DHFL, the public deposit holders and investors were core stakeholders. But in CIRP of Oyo Rooms, the hoteliers became core stakeholders.

4. Types of Communication in Insolvency Process:

Based on the nature of the message and the target audience, communications during the insolvency process could be divided as follows:

- (a) **Legal/ Technical Communication:** IRP/RP represents the company in a Court, sues and can be sued. Besides, he is responsible for communicating with government authorities, moderates the meetings of the CoC, communicates the

decisions of the CoC to the AA and other platforms of judiciary, communicating with the IBBI and IPA etc. All these communications are very specific wherein the text has their specific meanings. S/he must be accurate, clear, and concise while communicating with these forums and institutions. Though s/he is assisted by a team, the final responsibility lies with the IRP/RP. The credibility of the IRP/RP as a professional is always at stake. Besides, in case of fault, IP could also be penalized by IBBI and/or concerned IPA.

- (b) **Business Communication:** Running the CD as Going Concern is primary responsibility of the RP for it is crucial for the core objectives of the IBC i.e., Resolution, Value Maximization and Promoting Entrepreneurship, availability of credit and balancing the interests of all the stakeholders. In the process, the IRP/RP is required to strike deals with business partners, arrange for interim finance, and ensure that all the business stakeholders of the company such as contractors, suppliers, wholesalers, retailers, and operational creditors etc. continue the supply of goods/services and inputs required for smooth operation of the company. If the consumers of the CD are demoralized and lose the trust in the company, it is the job of IRP/RP to plan communication campaign through the right mode and channel to win over confidence of the stakeholders.
- (c) **Conversational Communication:** From the perspective of communication, this is more complex because one needs to prepare one's message, select appropriate channel, minimize barriers of communication, and create conducive ambience to ensure that the target group is receptive enough to grasp the message in the intended way. Besides, the communicator is also required to put in place a mechanism for response analysis and prepare for next communication. The stakeholders of this category constitute employees, contractors, labourers, employees' unions, and the local population.

IRP/RP will be required to decide language to be used and its standard as per the educational standard of the target group. Contract labour, employee unions, employees, and local population have different levels of education and understanding so one communication language mode and channel may not be fit for all. Besides, in oral communication i.e., while addressing public gatherings, official meetings etc. through face to face or video conferencing, the IRP/RP needs to be very careful about the kind of language, standard of language and body gesture etc. In conversational communication, the creative presentation through pamphlets, leaflets, posters, short films, videos, newsletters, advertisements in local newspapers etc. may be more effective.

Maintaining positive relationships with such third parties through trustworthy communication helps in running the company as a going concern thereby resulting in value maximization.

- (d) **Image Management:** Mainstream media plays an important role in winning back and holding the confidence of stakeholders. Though appropriate messaging in the form of media interviews, press releases, event coverage, etc. through media, an IP can improve image of the company and its products. Here targeted messaging plays vital role in which classification of the target audience, designing of the message/s, selection of channel, mode of communication etc. are very important. It is recommended that an IP uses diversified mode of communication such as periodic text emails, multimedia emails, e-newsletter, e-pamphlets, e-posters, audio messages, short videos, social media etc. to reach out to the target groups. The image of the corporate debtor plays a significant role in enhancing brand value and credibility of

⁶ The Economic Times (2021): Supreme Court directs UP Police to immediately release Jaypee Infra IRP, March 03 (<https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-appalled-over-arrest-of-court-appointed-irp-for-jaypee-infratech-orders-immediate-release/articleshow/81295898.cms>)

its products in the market which is crucial in value maximization. The IP should remember to be in continuous compliance with the Code of Conduct particularly on confidentiality of information and must deploy appropriate restraint when communicating one's achievements.

- (e) **Miscellaneous:** Communication with government authorities, police⁶, law and order agencies, foreign countries, CoC will require a curated approach for the context.

5. Conclusion

The insolvency resolution process involves almost all forms of communications i.e., intrapersonal, interpersonal, group and mass communication. IP is the competent authority to approve messages related to the company, acts as a moderator during the meetings of the CoC, and also engages in direct/face to face communication with various stakeholders either through virtual mode or in-

person meetings. The IP needs to maintain a balance between legality and simplicity so that the messages are interpreted by the target group in a desired manner. From the perspective of communication, the role of IRP/RP is like the Chief Communication Officer of the CD. Besides, he is responsible for engaging, winning over and boosting the confidence of all stakeholders, and maintain the credibility of the insolvency resolution process.

Therefore, s/he should be very cautious in drafting the messages for each group/ stakeholder and crosscheck them before dissemination whether they are textual or oral. Besides, there should also be a proper mechanism in place for response analyses. Even a single piece of wrong information, misinformation or disinformation or any message conveyed in haste and /or in anger could potentially derail the insolvency resolution process and may even put at risk the safety and security of the IRP/RP and his team.

