

Indian Institute of Insolvency Professionals of ICAI (IIPI)

Statement on Safeguarding the Rights, Privileges, and Interests of Insolvency Professionals

1. Introduction

- 1.1. The objective of the Insolvency and Bankruptcy Code, 2016 (IBC), as an economic legislation is to provide effective legal framework for resolution of distressed businesses by reorganizing them. IBC's primary objective is to rescue and revive a company in distress and where liquidation is considered as the only last resort. The other important objectives are maximizing the value of assets of a Debtor in distress and to promote entrepreneurship, availability of credit and, balancing the interests of all the stakeholders.
- 1.2. An Insolvency professional (IP), in the capacity of resolution professional (IRP/RP) or Liquidator is one of the key pillars, as envisaged under IBC, for achieving the above-mentioned objectives. The legal framework under IBC requires an IP to operate a fair and transparent conduct of corporate insolvency resolution process, casting upon an IP, multiple and at time roles and responsibilities as an administrator functioning under the guidance of the Committee of Creditors or as a professional serving as a Liquidator or bankruptcy trustee
- 1.3. Section 204 of the IBC deals with the functions of Insolvency Professional Agencies. Such functions, inter alia, includes "*to safeguard the rights, privileges and interests of insolvency professionals who are its members*".
- 1.4. This document is issued in the context of the above section and enshrines some important aspects for the guidance of the IP and all other stakeholders. While preparing this document, the existing jurisprudence, ecosystem, and constraints have been kept in view, and needs to be read in the context of the constantly realigning environment that the IB Code operates in.
- 1.5. This document is to be read in conjunction with the requirements of the IBC, regulations and circulars/notifications issued thereunder. In case of any variation, the provisions of such law, regulations, and notifications shall prevail over the requirements of this document. Furthermore, this document is directory in nature and intended to guide IP's who may exercise due professional care in following this document. It is also to state that IIPI shall not be responsible in any manner and to anyone, for any action(s) taken based on this document. IPs are advised to exercise their discretion and, necessary due diligence depending upon the circumstances of each case.

2. Rights, privileges and interests of an IP

It needs to be emphasized that roles performed by an IP are unique to the context of the engagement handled. There can be no one rule or guidance on this matter. The RP should, always, be able to demonstrate alignment with the letter and more importantly the spirit of the Code and this would be the best safeguard of an IP's right, interest or privilege. The following are the general guidelines on various important aspects of the IBC processes where adequate safeguards may be exercised by the IP:

2.1. Right to expect Adherence to IBC and Regulations by all stakeholders

Adherence to timelines while conducting CIRPs or liquidation processes is the main essence of IBC. The RP is required to maintain transparency in the process, ensuring that all stakeholders are appropriately informed, and stakeholders should be encouraged to work together constructively to pursue resolution and avoid liquidation.

2.2. Right to perform only Roles and Responsibilities designated for IP under IBC

- a. While discharging professional duties under IBC, an IP is required to act impartially, balance the interest of multiple stakeholders, communicate with them clearly, maintain contemporaneous records and exhibit ethical conduct keeping in mind the public interest as underlying principles.
- b. The 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 Court to conduct the resolution process and is vested with various statutory duties and powers. While discharging his duties and exercising his powers, it is crucial that the RP abides by the IBC and the underlying rules, regulations, and guidelines at all times.

2.3. Right to Independence of the IP

The IP should ensure complete independence as prescribed by the Code and regulations. In cases where there is a potential threat to independence including those emanating from various stakeholders, the same should be brought to the notice of the stakeholders and appropriate measures to mitigate such threats should be exercised and the IP shall, in no case, cause his/her independence to be compromised.

2.4. **Right to custody and control of assets**

The IP has the right to take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor. The IP is entitled to 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 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

2.5. **Right to confirm Terms of Engagement**

The IP should consider communicating in clear and specific terms, the scope of work performed by him/her preferably by way of an engagement letter aligned to the requirements of the Code. As the Code is still at a nascent stage, the IP would also need to educate various stakeholders on their roles and responsibilities vis a vis the IBC so that the assignment can be carried out with seamless and timely interactions by various stakeholders

2.6. **Right to Information and Access to books and records**

The IP is entitled to obtain all the information and access to books and record to enable to manage the operations of CD as a going concern. IPs have also been conferred the authority to access the books of accounts, records, and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants, and such other persons as may be specified.

2.7. **Right to lawful Remuneration**

The IP should consider to agree on the remuneration payable as well as the fees is any to support staff in clear and precise terms and document the same in writing. This is required in all roles of the IP processes including as Interim Resolution Professional, Resolution professional, Bankruptcy Trustee, Liquidator. Professional fees should be commensurate with the nature and scale of the engagement with due approvals as specified by the Code and regulations and should be on an arm's length basis at all times

2.8. **Right to Engage Experts and professionals**

The IRP/RP is entitled to appoint accountants, legal or other professionals as may be necessary to assist him in discharge of his duties in conduct of the CIRP or Liquidation, if he is of the opinion that the services of such professional are required and such services are not available with the corporate debtor. The professionals should be appointed at an arm length basis and to ensure the independence of such appointed professional.

2.9. **Right of Conduct of meetings and document minutes of the same**

An Insolvency professional may convene a meeting of the committee as and when he considers necessary as per the Code and regulations. A resolution professional should convene a meeting if the same is made by members of the committee representing at least thirty-three per cent of the voting rights. The RP should circulate the minutes of the meeting by electronic means to all members of the committee within 48 hours of the conclusion of the meeting.

2.10. **Right to ascertain reasons for replacement of the IP**

Where, at any time during the process under the Code, a replacement of the Insolvency Professional is proposed and directed the parties approving such replacement shall provide reasons for such replacement. In the eventuality of any perceived unjustified removal, the IP may also consider representations on the matters and approach Adjudicating Authority for necessary intervention/ directions.

2.11. **Right to Personal/Physical Security**

The IP may consider availing insurance cover for processes under the Code, with due approvals as relevant from the stakeholders who are authorized to approve such expenses.

In the eventuality of any non-cooperation including threat to physical security to the IP or his staff member(s) or his personal property, IP should invariably approach AA for necessary intervention, invoking Section 19 (2) & (3) of IBC. It may be noted, under section 236 the AA has the powers, inter-alia, to penalize the offenders in such matters, through special courts, by issuing instructions to IBBI. Moreover, to counter the immediate threat to personal/physical security, IPs may consider approaching police authorities in the concerned jurisdiction. If needed, AA may be requested, inter alia, to facilitate police protection by issuing necessary instructions.

2.12. Right and Obligation to File information to IIIPI and IBBI

Timely and relevant disclosures should be filed in respect of relationship and cost to IIIPI website, as per extant guidelines. In case of conflict of interest with a fellow professional, the dispensation in the Grievance Redressal/Disciplinary Mechanism of IBBI or IIIPI should be availed. Further, if aggrieved by the Disciplinary order of IBBI or IIIPI against an IP member, the facility of review (IBBI) or appeal (IIIPI) as applicable may be availed by the concerned IP.

2.13. Right to legal remedies

Section 233 of Code provides Protection of action taken in good faith. No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government, or the Chairperson, Member, Officer or other employee of the Board or 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.

3. **IIIPI's Framework and Mechanisms to aid/assist IP Members**

The following framework and mechanisms being in place and made operational by IIIPI to aid and assist member IPs, may be noted, and utilized as applicable:

- 3.1 **Forum for Seeking Experts' Views/Advise:** IIIPI has created and provided on its website, a portal called 'Discussion Forum' where professional members are allowed, inter-se, to interact to raise and/or respond, queries of professional nature. To enhance the quality of response, efforts are being made to involve experts/experienced IPs.
- 3.2 **Framework to Guide New Entrant IPs in conducting the Assignments under IBC:** IIIPI has an effective "**Mentorship Program**" for its members. Such dispensation would allow the members to seek mentorship of experienced IPs in the initial phase, without incurring any cost. The same is provided through web-based portal on IIIPI's website.
- 3.3 **Building Knowhow and capacity of the member IPs:** In respect of continuous capacity building of the members, IIIPI conducts, on a regular basis, training/awareness programs including **Executive Development Programs**, on contemporary topics and common issues/challenges. Moreover, IIIPI also publishes a professional research (& peer reviewed) journal 'The Resolution Professional' on quarterly basis. These avenues should be utilized by the members in the direction of upgrading their skills and knowledge on continuous basis. As the outcome of several studies, many publications providing background guidance on best practices under IBC, Quality Control by IPs and Code of Ethics for IPs, have been made available on website and through email circulation.
- 3.4 **Framework to enhance the Quality and standardized the professional services under IBC:** IIIPI has an effective "**Peer Review Policy**" mechanism for its members. The mechanism attempts to provide a comprehensive framework to benchmark the professional services under review to help improving performance, decision making,

adoption of best practices and standards including ethics, compliance with relevant laws, established standards and principles. This process may aid stakeholders in building reliability and credibility of the professional services rendered by the respective IP appointed for a particular assignment under IBC. Peer review is primarily directed towards ensuring as well as enhancing the quality and standardized (to the extent possible) professional services by IPs. Peer Review is to be conducted by an independent evaluator known as a Peer Reviewer. Peer Review is to be undertaken by IPs on voluntary or compulsory basis as prescribed in the policy document depending upon the criteria viz. handling or having handled ten or more CIRP/ Liquidations undertaken during specified past period for peer review (up to 3 years), initiate the peer review of services on compulsory basis.

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