

Key Takeaways from Addresses of Dignitaries in the Webinar on “Interaction with CFOs of CDs & Successful Resolution Applicants (SRAs)” held on April 28, 2023

Indian Institute of Insolvency Professionals of ICAI (IIPI) organized a Webinar (Virtual) on the topic “Interaction with CFOs of CDs & Successful Resolution Applicants (SRAs)” held on April 28, 2023.

Dr. Ashok Haldia, Chairman-IIPI, delivered the Welcome and Opening Address for the Inaugural Session which was followed by Special Address of Dr. Sanjeev Gemawat, Group Chief Counsel, Vedanta Group. Thereafter, a technical session was conducted in which Mr. R. Venkataram, MD, Alvarez & Marsal; Mr. Abhilash Lal, Insolvency Professional; CA. K.V. Jain, Insolvency Professional, shared their practical knowledge and experiences on various aspects of resolution of a corporate debtor improving reach to investors from the market and facilitating hassle-free take over by the new management. We present 'Key Takeaways' from the Webinar, as follows:



1. Insolvency Professionals (IPs) need to step into the shoes of other stakeholders such as corporate debtors (CDs), prospective resolution applicants (PRAs), resolution applicants (RAs), and Financial Creditors (FCs) who are part of the Committee of Creditors (CoC). The IP in his/her role as CEO of the CD performs huge responsibility but needs to be cautious about expectations of various stakeholders.
2. Bankruptcy, insolvency, mergers, acquisitions, and amalgamations are just reflections of and dependent on the overall state of the economy of the country.
3. Insolvency and Bankruptcy Code, 2016 (IBC) is about revival of the company not just recovery so that the company moves in the next stage of its life, and everybody gets benefitted. However, in the course of its implementation, the recovery has become more important, which is a matter of serious concern.
4. IBC has created a positive credit culture in the ecosystem where companies are now apprehensive before committing any default. Besides, it has created a market where there is free entry, free competition and free exit.
5. IBC's derailment from resolution to recovery has dented the objective of legislation. About 10% of the total CIRP cases so far are in revival mode while 31% have gone into liquidation.
6. Chief Financial Officer (CFO) plays a pivotal role in the revival of the corporate debtor. He provides all the information, addresses apprehensions and responds to questions which are raised. Besides, he also plays a main role in implementing the Resolution Plan.

7. The role of CFO starts from the day of filing the CIRP application before the NCLT and continues for 4 to 5 years after implementation of the plan as queries are raised and petitions filed before the Adjudicating Authority (AA).
8. Section 30 and Section 31 of the IBC do not provide much scope of adjudication by Adjudicating Authority (AA). After approval of the Resolution Plan by CoC, the Adjudicating Authority (AA) is expected to act only as a registry. Adjudication should be kept distinct from distribution process. The AA may not go into adjudicating on issues related to distribution of assets as long as it is done in compliance to Section 53 of the IBC.
9. The frivolous litigation in the name of public interest, public policy, and various grey areas of the IBC delayed the resolution process which in turn causes huge loss to the value of the CD.
10. The very idea of "Creditors in Control" is defeated when creditors are more interested in recovery than revival. Focus on recovery makes the IBC antithetical to the very concept of revival. Therefore, we should bring debtors somewhere to facilitate the revival. The creditors should keep in mind that 'hair cut' is better than 'head cut'.
11. IPs should not be carried away with the theories and principles of equity and focus on revival of the CD as per the legal framework of the IBC.
12. After taking charge of the CD, the IRP/RP should have a thorough understanding of the nature of business. This goes a long way in value maximization and resolution of the CD and also hassle free take over by the investor.
13. IPs should act as trustee of the CD. The sharing of information with the CoC, PRAs, RAs and SRA may not be described in the law but is very crucial for resolution of the CD.
14. After the Rainbow judgement of the Supreme Court, AAs now desire commitments from the SRA in the Resolution Plan that they will be paying all EPFO dues, statutory dues, Income Tax liability etc. AAs ask the SRA not to impose any kind of condition in the Resolution Plan. If SRA demands any relief, AA refers it to concerned government department. Thus the 'clean slate' theory has been diluted. After the SRA comes into the picture, government departments and local bodies pressurize the SRA for their dues and even ask for the dues pending before admission of the CIRP.
15. Presently, there are no definite guidelines for implementation of the Resolution Plan but if it fails, the company is given one more chance. Thereafter, the CD goes into liquidation. Thus, the implementation of the Resolution Plan is very crucial and therefore, there should be adequate guidelines for implementing the Resolution Plan.
16. Resolution Applicants (RAs) should know what exactly the value of the CD is. Thus, they should be able to assess the potential of the CD and devise a payment plan.
17. After approval by NCLT, SRA runs the business as per its strategy including hiring of professionals, procurement, supply chain management, finance, accounts, and reporting etc.
18. The acquisition of a company through Resolution Plan involves a cultural transition as well. There is certain amount of fear and trepidation among employees regarding their future. It is practically difficult to replace everyone on the CD. Therefore, the SRA should immediately communicate its policy to employees. Talent managers should identify key talents and plan a policy to retain them and also a policy on how to handle the others. Similarly, the new management is required to take a call on data storage, data sharing, software licenses, and IT systems etc.
19. SRA needs to do all the compliances related to stock market, local government, state government and central government, reach out suppliers, and dealers of the company with an emphasis that the quality to the service/ product should be improved under the new management.
20. There should not be interim moratorium for Personal Guarantors to Corporate Debtor (PG to CD) under Section 94 and Section 95 of the IBC because it delays the process of CIRP. However, final moratorium should be there as in case of the CD on commencement of CIRP.
21. Timeliness is the most important aspect for SRA. Uncertainty caused by the pendency of cases is demoralizing the investors.