

## Peer Review Policy

### INTRODUCTION

The objective of Insolvency and Bankruptcy Code 2016 (IBC), as an economic beneficial legislation is to provide effective legal framework for resolution of distressed businesses by reorganising such businesses. IBC's first order objective is rescuing a company in distress and liquidation can be viewed only as the last resort. The second order objective is maximising value of assets of the company and the third order objective is promoting entrepreneurship, availability of credit and balancing the interests of all stakeholders. IBC provides for bifurcating the interests of the company from that of its promoters to ensure revival and continuation of the company by protecting it from its own management.

Insolvency professional (IP), in the capacity of Interim Resolution Professional (IRP)/Resolution Professional (RP) or Liquidator is one of the key pillars as envisaged under IBC, for achieving the said objectives. The legal framework under IBC requires an IP to establish fair and transparent conduct of insolvency resolution process, casting upon an IP, inter alia, following responsibilities reflective of qualitative aspects in such processes (in a non-exhaustive manner):

### Provisions under IBC, 2016

- a) Section 17 and Section 18 require that the IRP/RP is vested with the powers of the board of directors of the Corporate Debtor (CD). The officers and managers of the CD shall report to the IRP, providing him access to documents and records of the CD. The IRP/RP shall act and execute in the name and on behalf of the CD, all deeds, receipts, and other documents and take such actions, in the manner and subject to such restrictions, as may be specified by the Board.
- b) Section 20 requires that the IRP/RP shall make every endeavour to protect and preserve the value of the property of the CD and manage its operations as a going concern. IRP/RP shall have the authority to appoint professionals, to enter into contracts on behalf of the CD or to amend or modify the contracts or transactions, to raise interim finance, to issue instructions to personnel of the CD as may be necessary for keeping the CD as a going concern and to take all such actions as are necessary to keep the CD as a going concern.

- c) Section 23 requires RP to conduct the entire Corporate Insolvency Resolution Process (CIRP) and manage the operations of the CD during such process. Further RP is required to continue to manage the operations of CD after the expiry of such process, until an order approving the resolution plan under sub-section (1) of Section 31 or appointing a liquidator under Section 34 is passed by the Adjudicating Authority (AA). Further, in case there is a change in IRP to RP or from RP to RP/Liquidator, the incumbent IP shall provide all the information, documents and records pertaining to the CD in his possession and knowledge to the successor IP.
- d) Section 28 requires IRP/RP, during the CIRP, to take prior approval of the Committee of Creditors (CoC) for certain actions.
- e) Section 29 requires that IRP/RP shall provide to the resolution applicant access to all relevant information in the form of Information Memorandum (IM) in physical and electronic form to formulate a resolution plan.
- f) Section 30 requires that the IRP/RP shall examine each resolution plan received by him and shall present the same to the CoC for approval.
- g) As per Section 208(2), an IP is obliged to take reasonable care and diligence while performing his duties, to comply with all requirements and terms and conditions specified in the byelaws of the Insolvency Professional Agency (IPA) of which he is a member; to allow the IPA to inspect his records; to submit a copy of the records of every proceeding before the AA to the Insolvency and Bankruptcy Board of India (IBBI or Board) as well as to the IPA of which he is a member; and to perform his functions in such manner and subject to such conditions as may be specified.

### Provisions as per Code of Conduct under Schedule I of IBBI (IP) Regulations

- h) Clause 5 provides that an IP must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.
- i) Clause 12 provides that an IP must not conceal any material information or knowingly make a misleading statement to the IBBI, the AA or any stakeholder, as applicable.

- j) Clause 13 provides that an IP must adhere to the time limits prescribed in the IBC and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.
- k) Clause 15 provides that an IP must make efforts to ensure that all communication to the stakeholders, whether in the form of notices, reports, updates, directions, or clarifications, is made well in advance and in a manner which is simple, clear, and easily understood by the recipients.
- l) Clause 16 provides that an IP must maintain written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions.

**Monitoring by Insolvency Professional Agency (IPA)**

- m) The Code/IBC under Section 204(c) mandates monitoring by IPA of the performance of IPs with respect to legal compliance and empowers IPAs to call for information and records.
- n) Clause 8 of IBBI (Model byelaws and Governing Board of IPAs) Regulations 2016, provide for constitution of Monitoring Committee by an IPA. Further, clause 15 of such regulations provide for formulation of Monitoring Policy by an IPA for the purpose.
- o) The objective of monitoring of IPs is to ascertain whether the conduct of IPs is in overall interest of the stakeholders, CD as going concern and to ensure that

the position of trust held by IPs is not abused by them and in cases where it is, to ensure appropriate action is taken.

**Inspections of IPs by IBBI and IPA**

- p) Section 196(1) of the IBC empowers IBBI to carry out inspections and investigations, monitor the performance and call for any information or records, inter alia, from IPs.
- q) As per Section 208 (2) (c) of the IBC, IPAs are authorized to conduct the inspection of IPs enrolled with it.
- r) Further as per Clause 18 of the Code of Conduct an IP must appear, co-operate and be available for inspections and investigations carried out by the IBBI, any person authorised by the IBBI or the IPA with which he is enrolled.

In view of many duties and responsibilities cast upon IPs, it is of paramount importance for an IP, whether part of an IPE or not, to observe and maintain high standards of quality in connection with any professional assignment. Such approach shall enthruse confidence in other stakeholders about IP's services on one hand and support IP to face any regulatory or legal challenge, on the other. Moreover, IP should be seen to be following such high standards of quality from third person's perspective. In this connection, an independent review of services by third person, often a peer-practitioner rather than a regulator, can serve the desired purpose. This Peer Review mechanism is a proactive, and pre-emptive measure by IPs to enthruse confidence in stakeholders and regulator. Though this mechanism is proposed to be voluntary for smaller sized practitioners, it is proposed to make the mechanism mandatory for certain category of IPs as mentioned elsewhere in this policy document.

.....to be continued.

