



Authority (AA) appoints a Resolution Professional (i.e. IRP/RP) and from the date of his appointment the management and the affairs of the Corporate Debtors (CD) vest with him and the power of the Board of Directors or the partners of the CD are suspended and exercised by him under the aegis of Committee of Creditors.

Thus, an Insolvency Professional (IP) as per IBC, steps into the shoes of the Entrepreneur/Managing Director of the company, and the task of managing all the affairs of the Company rest with the RP until its resolution or liquidation. Section 17 of the IBC describes in detail the Management of Affairs of the Corporate Debtor by the IRP/RP.

An IP brings expertise, experience, and objectivity to guide a distressed company through the insolvency process. He needs to understand the key intricacies of the business and plays the role of an entrepreneur in facilitating a successful resolution and maximizing the chances of the company's survival or achieving the best possible outcome for stakeholders if liquidation is unavoidable.

An IP during the CIRP thus needs to perform following functions which are the basic traits of an entrepreneur:

### 1. Securing Assets

Securing assets is the foundation for any business and the primary role of an entrepreneur is to enhance the value of its assets or otherwise take steps to reduce the deterioration in the value of the asset. Similarly, the primary responsibility of a Resolution Professional (RP) in the insolvency proceedings is to ensure proper preservation and protection of assets for the benefit of all the stakeholders. Section 20(1) of IBC, 2016 states that:

“The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.”

Some of the key actions that an RP shall take to secure assets of the CD during the CIRP are as below:

(a) **Taking physical control:** The RP physically secure assets of the CD by taking possession or control over them. This involve locking up premises, changing locks, taking possession of all company related documents including cheque books, company seals,

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letter heads, company websites, backup of data servers and taking all other measures to prevent unauthorized access.

- (b) **Ascertaining inventory:** The RP typically conducts a thorough verification of the company's assets to ascertain their existence, condition, and value. This helps in determining the overall financial position of the CD and assists the RP in resolution /value maximization.
- (c) **Documenting assets:** The RP ensures proper documentation of assets, including title deeds, lease agreements, contracts, and any other relevant legal documents. This helps in establishing ownership and protects the assets from potential disputes.
- (d) **Engaging professionals:** The RP may engage professionals such as security firms, valuers, and legal experts to assist in securing and safeguarding the assets. These professionals can help to assess the value of assets, protect them from theft or damage, and provide expert advice on legal matters.
- (e) **Restricting asset transfers:** The RP restricts transfer or disposal of assets to prevent any unauthorized transactions. This is done to ensure intactness of the assets and further ensure that they are available for distribution to the creditors under the insolvency process.
- (f) **Insurance of the assets:** The RP may evaluate the need for insurance coverage on valuable assets to protect against risks such as fire, theft, or natural disasters. This helps to mitigate potential losses and ensures value protection of the assets of the company during the insolvency proceedings.
- (g) **Monitoring and reporting:** The RP continuously monitors the condition and status of all the assets throughout the insolvency process. He is responsible for providing regular updates and reports to the relevant stakeholders, including the creditors and the insolvency tribunal.

By effectively securing and preserving assets during the insolvency process, the Insolvency Professional not only safeguards the interests of stakeholders but also ensures the possibility of revival of the business through existing/new set of entrepreneurs.

## 2. Communication Skills

The word “Communication” is derived from Latin word “*communicare*”, which means to share, or to make common. Communication is a two-way process which involves transfer of information or messages from one person or group to another. Communication is one of the most important skills for entrepreneurs to convey their vision, build relationships, inspire their team, attract customers, and negotiate with the vendors.

Likewise, an effective communication is crucial for effective management of insolvency proceedings by an RP, managing stakeholders' expectations, and fostering cooperation throughout the insolvency proceedings. While IBC itself is evolving in the country, communication at present is mostly meant in terms of the compliance and educating various stakeholders of the provisions of the Code and impact thereof, however with time it will become bidirectional.

**Some of the key actions an RP needs to take for effective communication in the CIRP are as below:**

- (a) **Identify stakeholders:** An IP should identify all relevant stakeholders, including creditors, debtors, employees, regulatory authorities, legal professionals, and others involved in the insolvency proceedings, to communicate with them effectively as and when required.
- (b) **Tailor communication to stakeholder needs:** Insolvency professionals needs to understand the specific information required by each stakeholder group. Some stakeholders may require regular detailed updates, while others may prefer summarized reports.
- (c) **Provide clear and concise information:** An IP should ensure that all communications are clear, concise, and easy to comprehend. He needs to avoid technical jargons and use simple language to explain complex issues.
- (d) **Timely and regular updates:** An IP should keep stakeholders informed about the progress of the insolvency proceedings through regular updates.

Timeliness is crucial in maintaining stakeholders' trust and confidence.

- (e) **Active listening and addressing concerns:** An IP should actively listen to stakeholders' concerns, questions and should also provide them opportunities to express their views. He should address their concerns promptly and transparently, demonstrating empathy and understanding. This helps in building trust and fosters a collaborative environment.
- (f) **Maintain confidentiality and data security:** Insolvency proceedings often involve sensitive financial and personal information. An IP needs to safeguard the confidentiality of the information and ensure compliance with relevant data protection laws.
- (g) **Documenting communication:** An IP needs to maintain thorough records of all communication with stakeholders. Proper documentation helps to establish a clear audit trail and serves as evidence to prove sharing of information and decision. It also aids in addressing any disputes or conflicts that may arise during the insolvency process.

In the realm of insolvency proceedings, the art of communication becomes a powerful tool, enabling them to navigate the complexities of insolvency proceedings, build strong relationships, and drive positive outcomes for all stakeholders.

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## 3. Timeliness

Timeliness is crucial for an entrepreneur for the overall success and the growth of his businesses. It is essential for an entrepreneur to seize opportunities, make informed decisions, execute plans efficiently, adapt to changes, meet commitments, manage finances effectively, and provide excellent customer service.

Likewise, timeliness is of utmost importance for an Insolvency Professional in handling insolvency cases and fulfilling his responsibilities. Section 12 of IBC states that “The corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement

date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.”

As, an IP is appointed to administer and manage the affairs of a financially distressed entity, his timely action is crucial in the following areas:

- (a) **Compliance with legal and regulatory requirements:** Insolvency professionals must adhere to strict timelines set by applicable insolvency laws and regulations. He shall ensure timely filing of required documents, submission of reports, and compliance with procedural requirements to meet statutory deadlines.
- (b) **Assess the viability of the business:** IPs are responsible for conducting thorough investigations into the financial affairs of the insolvent entity. Timeliness is crucial to gather necessary information, review financial records, assess the viability of the business, and identify potential fraudulent or preferential transactions. This enables him to prepare accurate reports and make recommendations to stakeholders.
- (c) **Formulation and implementation of resolution plans:** In cases where revival or resolution of the CD is feasible, IP need to facilitate submission of resolution plans within the specified timeframes. These plans should outline strategies to maximize value, address the interests of creditors, and ensure the continuity of operations. Timely implementation of approved resolution plans is essential to achieve the desired outcomes.
- (d) **Reporting and disclosure requirements:** IPs need to provide regular reports to stakeholders, creditors, and regulatory authorities, highlighting the progress of the insolvency proceedings, financial statements, and any material changes or developments. Timely and accurate reporting helps maintain transparency, builds trust, and allows stakeholders to make informed decisions.

Thus for an IP, timeliness becomes the driving force besides their ability to navigate the complexities of insolvency proceedings, seize opportunities, and deliver impactful results within the mandated timelines.

#### 4. Negotiation and Mediation Skills

Negotiation and mediation skills are important traits of an entrepreneur, particularly while dealing with stakeholders, business partners, suppliers, clients, and employees. It enables him to build strong relationships, resolve conflicts, secure favorable deals and navigate complex business situations.

Likewise, an Insolvency Professional is also required to effectively negotiate from time to time during the CIRP to find the solution of various issues. These skills help them to find optimal solutions, maximize value for all parties involved, and contribute to the effective resolution of insolvency cases.

An IP is expected to negotiate / mediate on continuous basis with the following stakeholders:

- (a) **Employee negotiations:** In a distressed situation during the CIRP, an Insolvency Professional poses a big challenge in managing human capital. Insolvency professionals may be required to negotiate with the employees of the CD for a change in their roles, their salary structure and for completion of project deadlines.

**Negotiation and mediation skills enable the IPs to build strong relationships, resolve conflicts, secure favorable deals, and navigate complex business situations.**

- (b) **Creditor negotiations:** The IP interacts closely with the CoC, which primarily comprises financial creditors. The IP presents resolution plans, negotiates terms, and facilitates discussions between the CoC and resolution applicants like repayment terms, timelines, and the distribution of proceeds.
- (c) **Collaborative negotiations with buyers or investors:** In cases where the sale of assets or the revival of the insolvent entity is pursued, insolvency professionals may engage in negotiations with potential buyers or investors. Negotiation skills are crucial in structuring deals, determining the terms and conditions and maximizing value for all parties involved.
- (d) **Strategic negotiations with regulatory authorities:** Insolvency professionals may need to negotiate with regulatory authorities or governmental bodies to address legal or regulatory requirements during the

insolvency proceedings. Negotiation skills help in presenting the case, discussing compliance issues, and seeking favorable outcomes while ensuring adherence to legal and regulatory frameworks.

In the course of insolvency proceedings, conflicts and disputes among stakeholders may arise. Insolvency professionals with mediation skills shall maintain neutrality and facilitate discussions and assist in resolving disputes. Mediation allows stakeholders to explore mutually acceptable solutions and avoid costly and time-consuming litigation.

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## 5. Optimal use of Resources

Entrepreneurs are known for their ability to find creative solutions with limited resources. The optimal use of resources in a business is crucial for maximizing efficiency, reducing waste, and achieving sustainable growth. In the context of insolvency, optimal use of resources is crucial for insolvency professionals to effectively manage and maximize the outcomes of insolvency proceedings. Some of the key areas where insolvency professionals can focus on making the best use of resources during the CIRP are as below:

- (a) **Financial resources:** Insolvency professionals are expected to manage financial resources efficiently and ensure effective fund allocation during the insolvency process. This involves preparing realistic budgets, monitoring cash flow, and minimizing unnecessary expenses. Insolvency professionals should prioritize the use of available funds to cover essential costs, such as employee wages, legal fees, and operational expenses critical to the insolvency proceedings.
- (b) **Human resources:** Insolvency professionals are expected to effectively manage human resources involved in the insolvency process. This includes deploying skilled professionals, such as accountants, lawyers, and investigators, to carry out necessary tasks. Insolvency professionals should ensure the team is appropriately sized and skilled to handle the complexities of the case. Efficient utilization of human resources helps streamline the insolvency process and minimize costs.



- (c) **Information and data management:** Insolvency professionals are expected to deal with large volumes of information and data related to the insolvent entity's financial affairs. Effective utilization of information and data management systems can facilitate proper MIS, timely communication with stakeholders and compliance under applicable laws.
- (d) **Asset realization and distribution:** Insolvency professionals are expected to optimize the realization and distribution of assets to maximize recovery for creditors. This includes conducting thorough valuations, identifying potential buyers or investors, negotiating deals, and ensuring timely transfer of assets. By efficiently managing the sale or liquidation process, insolvency professionals can maximise the value realisation from the assets.

Efficient resource utilization stands as a cornerstone of the Insolvency Professional's entrepreneurial journey, enabling him to navigate complex insolvency proceedings, generate value, and pave the way for a bright future for distressed entities.

## Conclusion

While it is possible for insolvency professional to function as an entrepreneur, his job doesn't stand comparable to that of an Entrepreneur/Managing Director of a flourishing company for it is akin to the captain of a sinking ship with a responsibility to rescue.

Though these entrepreneurial traits are required for an Insolvency Professional, it is important to note that his role also involves adhering to legal and ethical standards, maintaining impartiality, and acting in the best interests of all stakeholders. Balancing an entrepreneurial mindset with professional responsibilities is crucial for an Insolvency Professional to shoulder the great responsibilities bequeathed on him under IBC.