



Indian Institute of Insolvency Professionals of India (IIPI)

REPORT

ON

SURVEY ON INSOLVENCY PROFESSIONALS’  
INTERFACE WITH STATUTORY AUTHORITIES AND  
ENFORCEMENT AGENCIES

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## Abbreviations

AA	Adjudicating Authority
AR	Authorised Representative
CBI	Central Bureau of Investigation
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
ED	Enforcement Directorate
EPFO	Employees Provident Fund Organisation
EOW	Economic offence Wing
IBBI	Insolvency and Bankruptcy Board of India
IBC / Code	Insolvency and Bankruptcy Code 2016
ICD	Insolvency Commencement Date
IP	Insolvency Professional
IRP	Interim Resolution Professional
NCLT	National Company Law Tribunal
NCLAT	National Company Law Appellate Tribunal
RP	Resolution Professional
SC	Supreme Court
SFIO	Serious Fraud Investigation Office (SFIO)
SOP	Standard Operating Procedure

## **REPORT - SURVEY OF INSOLVENCY PROFESSIONALS' INTERFACE WITH STATUTORY AUTHORITIES AND ENFORCEMENT AGENCIES**

### **1. BACKGROUND & RATIONALE**

- 1.1. IBC, 2016 (since inception in Dec. 2016) has been in vogue for over seven years and has provided effective mechanism for resolution to creditors in an expeditious manner. It's one of the landmark legislations, a hallmark of ease of doing business, among many other initiatives by the Government. However, worth noting here is the fact that about 75% of such liquidation cases were either already under the purview of BIFR or the Corporate Debtors were defunct.
- 1.2. Time is an essence of IBC, requiring the outcome to be completed ideally in 180 days or in any case within 330 days (including time in litigation, etc.). However, Delays in completion of processes is perceived to be one of the major challenges. In addition to above, thousands of cases are pending before admission stage at NCLT benches.
- 1.3. It may be noted that in the case of CIRPs of CDs, IRP/RP/Liquidator are required to take control of assets and affairs of the CD and for this purpose, IRP/RP/Liquidator are required to interact with statutory authorities as applicable, on a regular basis. Certain instances of such interactions by IRP/RP/Liquidator are mentioned below :
  - To interact with enforcement agencies (e.g. police) for seeking their support in enlisting cooperation of stakeholders (e.g. ex-management of CD);
  - Interaction with enforcement agencies is also needed wherever there are criminal proceedings ongoing against the CD and/or its ex-management;
  - To interact to various departments like, Income Tax, GST, PF, ESI with regard to their Claims, their assessment orders.
- 1.4. During CIRP/ Liquidation process, IRP/RP/Liquidator face difficulties in dealing with statutory authorities and enforcement agencies. Such authorities/agencies issue notices/summons to IRP/RP/Liquidator presuming that they are the representatives of ex-management and make them accountable for the offences conducted before the CIRP and at times, treat them as accused. IRP/RP/Liquidator are also asked and made responsible to provide information which is not available with them.
- 1.5. Over last seven years of IBC regime, IIRPI has consistently remained as the largest IPA of India by holding membership, confidence, and support of ~63% registered IRP/RP/Liquidator

(about 2600 nos.). IIPI has been contributing to policy development and its effective implementation. It is focused on capacity building of the newly evolving profession of IRP/RP/Liquidator/ other stakeholders; research, and studies in emerging areas; on ethical conduct and regulatory compliance during resolution processes.

1.6. Recently IIPI had carried out a two-levels survey to get a first-hand data from IP members in the context of timeliness and effectiveness of litigation during IBC processes, to understand the incidence, nature and implication of various litigation involved during CIRP/Liquidation processes. Basis the feedback, another round of survey was conducted to focus on specific issues related to statutory authorities and enforcement agencies. The result of first survey highlighted the following, among reasons for delay in Resolution/liquidation process:

- a) That in respect of proceedings/demands by Statutory Authorities (Taxation, Land Auth., EPFO, others), on an average (per CIRP) there are about 4 such proceedings involved, adding over 60 days in timeline and costing about Rs.3 lacs;*
- b) That in respect of support required from Enforcement Agencies (police, etc.), wherever needed, such support, including providing information or access to documents, was normally not available in many cases;*
- c) That in respect of actions taken by enforcement agencies during their proceedings by issuing notices/summons and make the RP/Liquidator held responsible for the action of ex-management.*

1.7. In view of above and given the importance of the interface with such authorities and agencies, IIPI has carried out second Survey to seek qualitative comments/suggestions in respect of issues faced by the IRP/RP/Liquidator while dealing with Statutory Authorities and Enforcement Agencies. In response to the above survey, IIPI has received responses from a number of IRP/RP/Liquidator based on their experience. The summarised report on responses received has been briefed in the following paragraphs.

## 2. RESPONSES RECEIVED FROM SURVEY

2.1 The survey was designed to seek feedback on certain specific matters like substantive or procedural issues, cost incurred, and time taken, etc., separately for statutory authorities and enforcement agencies. Further, participants were required to provide qualitative suggestions to improve the interface with such authorities and agencies. The responses as received have been summarised by categorising into two areas, viz. (i) Statutory Authorities and (ii) Enforcement Agencies, as follows:

## A. Statutory Authorities

S.No.	Broad Categories of Issues	Different Issues	Way Forward
1.	Substantive/legal issues faced by IRP/RP/Liquidator while dealing with Statutory Authorities (Taxation, Land Authority, EPFO, others)	<ol style="list-style-type: none"> <li>1. Claims filed by the departments are not in prescribed forms.</li> <li>2. Claims are not filed within the time limit (including extended timeline as per recent amendments) prescribed under the Code.</li> <li>3. Notices issued by the statutory departments may be based on frivolous complaints even without investigations.</li> <li>4. Departments filed applications with AA without proper documents and even after approval of the resolution plan. This results in delaying the process.</li> <li>5. Bank accounts of the CD at times, are attached by the departments like Income Tax department, in the course of recovery proceedings, despite there being a moratorium on such proceedings prescribed u/sec 14 of IBC.</li> </ol>	<ol style="list-style-type: none"> <li>1. Dissemination of knowledge of key IBC provisions to statutory departments, especially regarding moratorium related provisions, applicable forms to be used for filing claims, etc.</li> <li>2. Updation/knowledge should be provided to concerned officials of statutory departments, with regard to the role &amp; responsibility of IRP/RP/Liquidator with interface of other laws.</li> <li>3. Changes may be made in regulations of concerned departments/authorities and also A system of mutual cooperation and collaboration with IRP/RP/Liquidator who are also the officers of Court under IBC.</li> </ol>

2.	Procedural issues faced by Insolvency Professional / Liquidator while dealing with Statutory Authorities (Taxation, Land Auth., EPFO, others)	<ol style="list-style-type: none"> <li>1. Statutory departments are not fully aware/equipped with IBC provisions and therefore are not aware about the legal status of IRP/Liquidator.</li> <li>2. The records (pertaining to CD) maintained by the departments are updated suo-moto, often without prior notice to CD. Hence, such records do not match with the requirements of the CD's RP/Liquidator, i.e. based on the old records.</li> <li>3. They do not provide the timely information, which delays the process under IBC, which is a time-sensitive exercise.</li> <li>4. Sometimes department presumes the status of RP/Liquidator as a representative of the CD, and take legal action against RP/Liquidator instead of that against CD/promoters.</li> <li>5. Mostly the updated/current contact details like, phone no., address etc. of the ex-management are not available with departments, which becomes a bottleneck for IRP/RP/Liquidator</li> </ol>	<ol style="list-style-type: none"> <li>1. A nodal officer at HO level and also regional/zonal office level may be designated for matters related to IBC and/or coordinating for data requirements.</li> <li>2. Apprise the departments/officials about the legal status of the RP/Liquidator as a court officer and not a representative of Ex-management of CD.</li> <li>3. Timeliness should be prescribed for submitting the responses on the queries of RP/Liquidator.</li> </ol>
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		to get the updated details.	
3.	Average time spent in dealing with above issues and also the % of average time spent with total time spent on a particular CIRP/Liquidation case.	The time spent in dealing with issues related to statutory departments, on an average, contribute to 25%-40% (as shown by the survey) of the whole timeline of the CIRP, in a significant way.	1. Reasonable timeliness should be prescribed by respective Statutory Departments for submitting the responses on the queries of RP/Liquidator.
4.	Average cost spent in dealing with above issues and also the % of average cost spent with total cost spent on a particular CIRP/Liquidation case.	The cost spent in dealing with issues related to statutory departments, on an average, contribute to 8%-15% of the whole cost of the CIRP.	2. The procedures/SOPs for mutual coordination may be laid down by respective departments to deal with emerging issues in a cost-effective manner.

## B. Enforcement Agencies

S.N o.	Broad Categories of Issues	Different Issues	Way Forward
1.	Substantive/legal issues faced by IRP/RP/Liquidator/Liquidator while dealing with Enforcement Agencies like, Police, ED, EOW, CBI, SFIO etc.	<ol style="list-style-type: none"> <li>1. Enforcement Agencies usually treat the IRP/RP/Liquidator at par with CD's ex management for previous wrongdoing or any criminal offence occurring on behalf of CD.</li> <li>2. Even after completion of liquidation process, Liquidator was sought to be booked for offence in charge sheet.</li> <li>3. Summons with very short notices (at times, only an hour or so) are issued by enforcement agencies and information is sought under notices, which are generally unavailable with IRP/RP/Liquidator.</li> </ol>	<ol style="list-style-type: none"> <li>1. Dissemination of knowledge/training of key IBC provisions to officials of Enforcement Agencies, regarding key provisions of IBC, roles/status of RPs/Liquidators, etc.</li> <li>2. Appropriate amendment in legal provisions (IBC and elsewhere) are required with regard to the attachment of Assets.</li> <li>3. NCLT should be the exclusive and appropriate authority to order action against RPs/Liquidators in any default during the proceedings under IBC,</li> </ol>



		<ol style="list-style-type: none"> <li>4. Agencies insist on and do not forego the lien on the assets of the CD and also attached the assets of the CD during the CIRP process.</li> <li>5. Agencies file delayed responses to the interlocutory applications (IAs) filed by IRP/RP/Liquidator/Stake holders with NCLT (AA), which at times are without proper documentation.</li> </ol>	<p>for further trial/proceedings by Special Court u/s 236 of IBC.</p> <ol style="list-style-type: none"> <li>4. NCLT/ NCLAT or any other judicial forums should also mark the copy of order to the concerned Department/Agencies.</li> </ol>
2	Procedural issues faced by IRP/RP/Liquidator/Liquidator while dealing with Enforcement Agencies like, ED, EOW, CBI, SFIO etc.	<ol style="list-style-type: none"> <li>1. Agencies generally do not cooperate with IRP/RP/Liquidator during the CIRP /Liquidation process.</li> <li>2. Agencies do not consider/acknowledge the order of NCLT delivered in the course of CIRP/Liquidation process.</li> <li>3. Agencies take actions or issue notices at the initial level of investigations.</li> <li>4. There is inconsistency between different Acts and IBC and overriding effect between different statutes are not clear.</li> </ol>	<ol style="list-style-type: none"> <li>1. Timeliness should be provided to submit the responses on the queries of IRP/RP/Liquidator/Liquidators.</li> <li>2. Providing training to the officers of Agencies to apprise them with IBC provisions.</li> </ol> <p>The cases filed need to be examined/ investigated upfront by enforcement agencies, with respect to incidence and culpability of offence.</p>
3	Average time spent in dealing with above issues and the % of average time spent with total time spent	The time spent in dealing with issues related to enforcement agencies, on an average, contribute to	The procedures/SOPs for mutual coordination may be laid down by respective agencies to deal with

	on a particular CIRP/Liquidation case	10%-15% of the whole timeline of the CIRP/Liquidation process.	emerging issues in a cost-effective manner.
4	Average cost spent in dealing with above issues and the % of average cost spent with total cost spent on a particular CIRP/Liquidation case.	The cost spent in dealing with issues related to enforcement agencies, on an average, contribute to 5%-10% of the whole cost of the CIRP/Liquidation process.	
5	Comments on the onus of the Cost/expenses incurred in above cases? Whether the said cost was claimed as CIRP/Liquidation expenses or it was borne by RP/Liquidator.	80% of IRP/RP/Liquidator responded that the cost incurred in the above matters are treated as CIRP/Liquidation expenses. 20% of IRP/RP/Liquidator responded that COC did not approve the above expenses to be included as such.	A clarification may be provided under IBC regulations that such cost be made part of CIRP/Liquidation cost.

### 3. CONCLUSIONS.

3.1 In view of the interactions with IRP/RP/Liquidator through such studies/surveys, it has transpired that there is lack of the standardised practices and coordination between the various departments/agencies with regard to IBC regime and particularly the roles and responsibilities of IRP/RP/Liquidator as officers of court. The challenges faced by IRP/RP/Liquidator range from:

- (i) lack of acknowledgement of their formal role as officers of court;
- (ii) summons being issued against RPs/Liquidators, wrongly taking them as representatives of ex-management;
- (iii) making IRP/RP/Liquidator accountable for deeds or offences of CD prior to CIRP;
- (iv) delays in proceedings, disregard of moratorium under section 14 of IBC, among others.

3.2 As a result of perceived gap in delivery as such, the cost, time, and effort spent in aligning the processes under IBC with regard to interface with statutory authorities and enforcement agencies are significant. The issue deserves attention of Government and regulators, given the fact that any delay in the resolution effort leads to destruction in intrinsic value of CD's assets.

The suggestions to improve the interface with such authorities and agencies, include:

- (i) improving awareness and knowhow of officials of such agencies about the provisions of IBC and role of RPs/Liquidators;
- (ii) having in place SOPs by such agencies for interface on IBC matters;
- (iii) appointing by such authorities/agencies nodal point of contact at Central or regional or zonal level.
- (iv) streamlining the communication process in terms of time and cost effectiveness.

3.3 IBBI, as an apex regulator has held many awareness sessions for several statutory bodies and enforcement agencies. Besides, IIPI being a frontline regulator and the largest IPA under IBC, has also made efforts in reaching out to such agencies in the recent past. IIPI recognizes that that government agencies and enforcement agencies may as well, have been acting in pursuance of the role and responsibilities entrusted upon them and their may be gap in that regard in understanding of IRP/RP/Liquidator. It is therefore important that mutual interaction is taken place periodically. This will help in cohesiveness and cooperation in achieving the objectives of IBC and in discharging role and responsibilities of the various departments and agencies.

3.4 To sum up, mere amendments in the code/regulations may not suffice and it is necessary for all stakeholders/departments/ agencies to come together cohesively to ensure a time-bound and a cost-effective resolution under IBC. IRP/RP/Liquidator need to be sensitized about timeliness of responding to enquiries from Statutory Departments/Enforcement agencies. The findings and suggestions of this report may act as policy inputs and ready reference for tackling unique challenges that arise in the context of processes under IBC while dealing with statutory department/enforcement agencies.

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