

Help Us to Serve You Better

Guidance on Common Issues Observed by IIPI During Monitoring/Inspections of IPs

(.....Continued from the previous edition)

1.16. Observations related to Appointment of Professionals- Independence/Arm Length/Reasonableness of Fees.

| Observations | Relevant Provisions of Law | Remarks |
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| <p>i. It has been observed that IP delegated its authority to a professional to take custody of an asset at another location, considering it a nonengagement/ appointment. nor any relationship disclosure was filed by the IP. Therefore, the independence of IP and armslength basis could not be ascertained.</p> <p>ii. It has been observed that an engagement letter was not issued/maintained by the IP for the appointment of professionals.</p> <p>iii. It has been observed that combine fee is payable to professionals appointed like registered valuers. Also, the same is also not bifurcated in the engagement letter issued.</p> <p>iv. It has been observed that no quotation was sought for the appointment of a professional, therefore arm's length basis and reasonableness of fee cannot be ascertained.</p> <p>v. Relationship disclosure for appointment of professional is either not filed or incorrectly filed.</p> <p>vi. It has been observed that IP appointed IPE at 18 times more fee than IP, the reasonableness of the fee cannot be ascertained as IPE only provided support services to IP.</p> <p>vii. It has been observed that the appointment of professionals was done by CoC during the CIRP instead of IP. As a result, the independence of the IP cannot be ensured. For example, if the CoC directly hires a valuation expert or legal advisor without the involvement of the IP, it raises concerns about the impartiality of the process, as the IP's independence in overseeing and managing the CIRP may be compromised.</p> <p>viii. It has been observed that invoice raised by professional appointed is in name of another company/ nonregistered entity. Therefore, the arm's length basis and independence of IP may take a hit.</p> <p>ix. It has been observed that IP had appointed two professionals with overlapping of scope of work.</p> | <ul style="list-style-type: none"> • Regulation 27 of IBBI (CIRP) Regulations. • Clause 8B & 8C of Schedule I of IBBI (IP) Regulations 2016. | <p>i. Appointment of professionals may have critical lapses with both procedural and substantive implications, casting doubt on the independence and integrity of the insolvency professional (IP).</p> <p>ii. <u>Procedurally</u>, failures to issue engagement letters, seek quotations, and maintain relationship disclosures undermine transparency and regulatory compliance. Additionally, delegating authority without proper appointments or disclosures raises concerns about procedural oversight and independence.</p> <p>iii. Combining various non-compliances issues such as combined fees, overlapping scopes, and exorbitant payments to professionals without justification compromise the arm's length basis and reasonableness of expenditures may have a <u>substantive impact</u>.</p> |

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| <p>x. It is observed that the scope specified in the engagement letter issued by the insolvency professional to the professionals appointed contains the scope of work which reflects the delegation of duties rather than assistance wherein the Independence of IP cannot be ascertained. For example : The appointed professional carries out their work independently, with no feedback loop to the IP, and the IP adopts the Professional's findings without any documented independent review. This situation could be considered outsourcing, as there's no proof that the IP remained in control of the process.</p> <p>xi. It has been observed that IP appointed various law firms and advocates by paying them exorbitant fees when a law firm was already appointed for legal assistance at exorbitant cost.</p> | | |
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1.17 Observations related to IPs responsibilities related to PUFE Transactions:

| Observations | Relevant Provisions of Law | Remarks |
|---|---|--|
| <p>i. Delay in the determination of PUFE transactions.</p> <p>ii. Undue delay in filing application with AA after the same was apprised in the COC meeting to all members.</p> <p>iii. Non-filing of CIRP-8 on the IBBI website for intimating details of his opinion and determination under Regulation 35A.</p> <p>iv. Non reviewing the report submitted by professional appointed for determine the application and after approval of resolution plan by COC filing additional transactions with AA by explaining the reasons that the IP was occupied by other activities that did not review the report and on review subsequent transactions were observed by the RP.</p> <p>v. Non-determination of transactions in the absence of non-ratification of fees for the professional to be appointed for determine such transactions</p> <p>vi. Appointing the related party as a professional to determine the transaction Undue delay in filing application with AA after discussion made with COC.</p> | <ul style="list-style-type: none"> • Section 25(2)(j) of the Code • Regulation 35A, 40A and 40B of IBBI (CIRP) Regulations. | <p>i. Firstly, delays in filing and determining Preferential Undervalued or Fraudulent Transactions (PUFE) hinder timely resolution and may jeopardize creditor interests.</p> <p>ii. Secondly, the non-filing of CIRP-8 on the IBBI website deprives stakeholders of crucial information regarding the IP's opinions and determinations, undermining transparency and regulatory compliance.</p> <p>iii. These <u>procedural lapses</u> may impede the efficient functioning of the insolvency process.</p> |

1.18 Observations related to fees:

| Observations | Relevant Provisions of Law | Remarks |
|--|---|--|
| <p>i. It has been observed that IP had jointly charged fees for IP and IPE both appointed and mentioned the % of sharing in the minutes of the COC meeting.</p> <p>ii. IP have charged an unreasonable fee from the operational creditor, the fee charged by the IP was more than the amount claimed by the OC.</p> <p>iii. Regulatory fees- Calculated wrongly/not ratified by the CoC.</p> <p>iv. Minimum fees not claimed by IP.</p> <p>v. IPE fees for support services are many times more than IP and no assessment of fees wrt team size and work done by IPE was recorded.</p> <p>vi. Withdrawal of IRP fees from the CD account without the same being approved by the COC.</p> | <ul style="list-style-type: none"> Regulation 33, 34 and 34A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Clause 25, 26 and 26A of Schedule I of IBBI (IP) Regulations 2016. Circular No. IBBI/IP/ 013 dated 12th June 2018. | <p>i. Firstly, the charging of fees jointly for both the insolvency professional (IP) and the Insolvency Professional Entity (IPE) raises procedural questions about transparency and fair allocation. Subsequently, charging unreasonable fees from operational creditors, exceeding the amounts claimed by them, suggests <u>substantive issues</u> regarding fairness and regulatory compliance.</p> <p>ii. Additionally, miscalculations or nonratification of regulatory fees by the Committee of Creditors (CoC) signify procedural lapses, undermining regulatory compliance.</p> <p>iii. Furthermore, failure to claim minimum fees and excessive IPE fees for support services without proper assessment highlight both procedural irregularities and substantive discrepancies, warranting immediate attention to ensure fairness and transparency in fee structures within the insolvency framework.</p> |

1.19 Observations wrt non-adherence/non- compliance to directions from AA:

| Observations | Relevant Provisions of Law | Remarks |
|---|---|---|
| <p>i. It has been observed that the IP have failed to comply with the directions of the AA specifically mentioned in the order eg: to provide consent, Public Announcement is a specific newspaper, to follow the process of withdrawal as per Regulations, stay on the constitution of COC, uplifting the stay and directed to constitute COC etc.</p> | <ul style="list-style-type: none"> Directions are given by the AA/NCLT under Rule 11 of NCLT Rules as well as based on the Principle of Natural Justice and /or in the interest of justice for achieving the intent of the Code. | <p>i. Given the judicial nature of proceedings before the AA, its directives carry the weight of court orders. Failure to adhere to these directives constitutes contempt of court, underscoring the seriousness of compliance obligations.</p> <p>ii. Disregarding the order of AA, may lead to jeopardize the CIRP and consequently impact the interests of stakeholders.</p> <p>iii. Compliance with AA directives is imperative not only to facilitate the smooth conduct of CIRP but also to uphold the integrity and authority of the judicial process.</p> |

1.20 Observations related to Preservation of Records

| Observations | Relevant Provisions of Law | Remarks |
|--|---|---|
| <p>i. It has been observed that the IP failed to comply with the timeline's requirement for the preservation of the record.</p> <p>ii. The IP confirmed the preservation of the record, however when documents were called for inspection unable to retrieve the same for the service provider</p> <p>iii. It has been observed that IP did not provide the documents for Inspections</p> <p>iv. The IP did not maintain the written contemporaneous records for all his decisions, communication with stakeholders.</p> | <ul style="list-style-type: none"> •Regulation 39A of IBBI (CIRP) Regulations 2016 •Clause 16 of Schedule I of IBBI (IP) Regulations 2016 | <p>i. Failure to provide records upon request by the IPA/IBBI constitutes a substantial lapse. Similarly, preserving records but being unable to retrieve them is considered non-preservation of records.</p> <p>ii. The IP must ensure the preservation of all records as per the list suggested in the Regulations.</p> |

1.21 Suggested List of Documents requisite at the time of Inspection of CIRP Assignments.

| S.No. | Particulars |
|---------------------------------------|---|
| Admission related Documents | |
| 1 | Copy of written consent given by IP to act as IRP / RP (Proof of submission of IP-1) |
| 2 | Application filed with the AA. |
| 3 | AA order admitting the application. |
| 4 | AA order appointing the Interim Resolution Professional. |
| 5 | Form A (Public Announcement) under CIRP Regulations, 2016. |
| 6 | Form AB (Written consent to act as AR) under CIRP Regulations, 2016. |
| 7 | Cost and relationship disclosure made to IPA. |
| 8 | Form FA (Application for withdrawal of CIRP) under CIRP Regulations, 2016, if any. |
| 9 | Intimation sent to commencement of CIRP to financial institutions and statutory authorities as applicable and circulation mails and receiving thereof. |
| Constitution of CoC related Documents | |
| 1 | List of creditors along with the details of the claims submitted with the AA. |
| 2 | Copy of claim forms and related documents submitted by creditors (like working sheet for claim verification and supporting documents for the working sheet) |
| 3 | Copy of the communication records stating the delay provided by the Creditors who submitted claim after 90 days from the insolvency commencement date. (As per Notification No. IBBI/2023-24/GN/REG106, dated 18th September 2023 (w.e.f 18-09-2023). |
| 4 | Application to AA for condonation of delay and adjudication of such claims (As per Notification No. IBBI/2023-24/GN/REG106, dated 18th September 2023 (w.e.f 18-09-2023). |
| 5 | Report certifying constitution of the committee of creditors. |
| 6 | Latest Audited financial statements of CD. |

(to be continued...)