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ROLE OF INTERM RESOLUTION PROFESSIONAL AND RESOLUTION PROFESSIONAL

AUTHORED BY – HARSH KUMAR (L20BLB019)

ABSTRACT

Insolvency resolution professionals (IRPs) and resolution professionals (RPs) have crucial responsibilities in the field of corporate insolvency and restructuring, which are explored in this study. The study sheds light on the varying responsibilities and skill sets required for these jobs by conducting a comprehensive review of global insolvency frameworks and a comparative analysis of international practices.¹ Key functions such as the creation of resolution strategies, the expert management of stakeholder interactions, and the efficient navigating of complicated legal and financial landscapes are discussed in this article, with a primary focus on their involvement throughout the insolvency lifecycle. To emphasize the adaptability of these positions in the face of shifting economic conditions, technological developments, and regulatory frameworks, the study explores into obstacles by drawing on case studies from a variety of jurisdictions.² In conclusion, the paper offers valuable insights and recommendations aimed at bolstering the effectiveness of IRPs and RPs in the intricate domain of corporate restructuring, positioning itself as a valuable resource for legal practitioners, policymakers, academics, and professionals involved in insolvency-related fields.

INTRODUCTION

The earliest regulations addressing insolvency and bankruptcy in India can be traced back to sections 23 and 24 of the Government of India Act, 1800. After that, various pieces of legislation were enacted, such as 1828's Statute 9, 1848's Indian Insolvency Act, 1909's Presidency Towns Insolvency Act, and 1920's Provincial Insolvency Act. In the post-independent era, the Companies Act of 1956 (CA, 1956) primarily governed corporate insolvency, focusing on the 'winding up' process for companies.³

¹ 'Quinquennial of IBC, 2016 (Preface)' <https://www.ibbi.gov.in/uploads/whatsnew/1d8b31fc65f7ac6f09a973be8f12f868.pdf>

² Understanding the IBC: Key Jurisprudence and Practical Considerations: A Handbook <https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>

³ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

For the purpose of locating and reviving sick industrial enterprises, the Sick Industrial enterprises Act (SICA) was enacted in 1985. In contrast, protecting creditor rights became a priority for policymakers in the 1990s and 2000s. Two laws, the Recovery of Debts and Bankruptcy Act (1993) and the Securitization, Reconstruction, and Enforcement of Security Interests Act (2002), were passed as a result. Overwhelming litigation and subpar results for businesses seeking resolution and creditors seeking recovery followed the proliferation of these laws.

In response to these issues, the Bankruptcy Law Reforms Committee (BLRC) proposed the development of a single, coherent body of law, which eventually became the Code.

The role of the Central Government-appointed Official Liquidator (OL) was formalized in the Companies Act of 1956. Since December 31, 2016, OLs have not been given any new matters to handle thanks to the implementation of the Code and subsequent amendments to the Companies Act of 2013. There were 4,865 companies in liquidation as of October 31, 2018, with 92% of them being categorized as "winding up by the Courts." A provisional or company liquidator appointed by the Tribunal must be an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) in accordance with the Companies (Winding up) Rules of 2020.

Both the BIFR and the Appellate Authority for Industrial and Financial Reconstruction were established by the Sick Industrial Companies Act. Experts managed early discovery of unhealthy enterprises, and BIFR suggested corrective action. Cases previously heard by the BIFR have been transferred to the National Company Law Tribunal (NCLT) following the adoption of the Code.

Learning from past experiences and international best practices, the BLRC suggested the formation of a cadre of regulated experts to monitor and manage commercial affairs. These specialists, known as Insolvency specialists (IPs), play a key role in assuring the adherence to legal rules while boosting efficiency. The Code provides the criteria for an IP, who can function as an Interim Resolution Professional (IRP), Resolution Professional (RP), or Liquidator depending on the specific procedure they are involved in.

INTERIM RESOLUTION PROFESSIONAL

Insolvency Professional Eligibility:⁴

An individual is deemed ineligible for registration as an insolvency professional, as per Regulation 4 of the Insolvency Professional Regulations, 2016. This precludes the following:

1. They are minors.
2. They lack permanent residency in India.
3. The individual in question does not possess the credentials and expertise that are specifically required per Regulation 5 or Regulation 9 of the Insolvency Professional Regulations, 2016, respectively.
4. A person has been found guilty by a reputable court of law for an offense that carries a maximum penitentiary term of six months or involves moral turpitude. It has been under five years since the sentence was completed. Those whose sentences exceeded seven years are rendered irrevocably ineligible.
5. They have submitted an application for adjudication as an undischarged insolvent.
6. Their mental state has been deemed to be defective.
7. Regarded as unsuitable and inappropriate. In determining an individual's suitability and appropriate status, the Board may take into account various factors including but not limited to integrity, reputation, character, lack of convictions and restraint orders, and competence, which encompasses financial solvency and net worth.

Those who satisfy the aforementioned criteria and adhere to additional stipulations of the Insolvency and Bankruptcy Code (IBC) are eligible for registration as Insolvency Professionals with the Insolvency and Bankruptcy Board of India (IBBI). Interim Resolution Professionals may be designated with the registration of insolvency professionals.

Appointment of Interim Resolution Professional:⁵

In the event that a corporate debtor or financial creditor files an application for the corporate insolvency resolution process under section 10, or section 7 respectively, the resolution

⁴ Insolvency and Bankruptcy Board of India (Model ByeLaws and Governing Board of Insolvency Professional Agencies) Regulations, 2016

⁵ IBC Laws Editor, "Read More: IBC Laws - Section 16 of IBC – Insolvency and Bankruptcy Code, 2016: Appointment and Tenure of Interim Resolution Professional" (IBC Laws, July 1, 2018) <<https://ibclaw.in/section-16-appointment-and-tenure-of-interim-resolution-professional/>>.

professional named in the application shall be designated as the interim resolution professional, on the condition that they do not have any pending disciplinary proceedings (Section 16(2) of IBC).

In the event that the corporate insolvency resolution process is instigated by an operational creditor, the Adjudicating Authority (National Company Law Tribunal - NCLT) will refer the matter to the Board for a recommendation if an interim resolution professional is not proposed.

ii. In the event that a resolution professional is proposed in accordance with section 9 of the IBC, they are designated as the interim resolution professional, provided that disciplinary proceedings are not pending (Section 16(3) of the IBC).

Section 16(1) mandates that an Interim Resolution Professional (IRP) be appointed by the Adjudicating Authority within a period of fourteen days starting from the date of insolvency commencement.

Tenure of Interim Resolution Professional:

The duration of the IRP remains in effect until the resolution professional is appointed in accordance with Section 22 (Section 16(5)).

Administration of Matters by an Interim Resolution Expert:

A. As of the appointment date,

- i. The IRP has the authority to handle the corporate debtor's affairs.
- ii. A halt is placed on the authority of the board of directors or the partners.
- iii. Managers and officers answer to the IRP.
- iv. When it comes to the accounts of businesses in debt, financial institutions follow the IRP's directives.

B. Since the IRP has been given management authority, it may do the following:

- i. represent the corporate debtor in its different roles.
- ii. Sign legal papers like deeds and invoices.
- iii. Look at books of account and electronic records.
- iv. Check that the corporate debtor is following all legal requirements.

Duties of Interim Resolution Professional (Section 18 of IBC):⁶

The IRP is responsible for:

1. Collecting information on the business debtor's assets, finances, and activities.
2. Determining the financial condition, including corporate activities and financial payments over the last two years.
3. Receiving and aggregating creditor claims.
4. Constituting a committee of creditors.
5. Monitoring and managing the corporate debtor's assets and activities until a resolution expert is selected.
6. Filing relevant information with the information utility.
7. Taking possession and custody of assets over which the corporate debtor has ownership rights, including physical and intangible assets, securities, and assets subject to determination of ownership by a court or authority.
8. Performing additional tasks as required by the Board.

INSOLVENCY PROFESSIONAL

Professionals in insolvency law are a savior for any business that is on the verge of insolvency.⁷

Bankruptcy is on the rise across the world as a result of poor financial management by commercial organizations and other factors.

Therefore, as part of the resolution process, the insolvency professionals assume control of the failing company and its financial creditors.

There has been a dramatic increase in the need for insolvency administrators. Knowledge of current rules and regulations is essential for success in the insolvency profession.⁸

⁶ Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited 2020(8) SCC 401

⁷ India's bankruptcy resolution professionals are under siege' <https://www.livemint.com/news/india/why-insolvency-pros-are-living-on-the-edge-11617894698411.html>

⁸ Sengupta Rajeswari, Sharma Anjali and Thomas Susan (2016), "Evolution of the insolvency framework for non-financial firms in India", Working Paper, Indira Gandhi Institute of Development Research, June.

Definition Of Insolvency Professionals

An insolvency professional is a person who is either registered with the Insolvency and Bankruptcy Board of India (IBBI) or is enrolled with an IPA.

Insolvency Professionals are employed by Insolvency Agencies and aid in the winding down of financially troubled businesses, partnerships, sole proprietorships, and individuals.

They have been given the authority to represent bankrupt businesses and people.

During a bankruptcy proceeding, an insolvency expert is crucial in the sale of assets and other forms of settlement.⁹

What is a Professional Agency for Insolvency?

Any business that has filed with the IBBI in accordance with Section 201 of the Insolvency Code of 2016 is considered an insolvency professional agency.

These organizations play a significant role in regulating the actions of insolvency professionals and fostering their professional growth and success.

The bylaws of the insolvency agency provide that its professional members must follow certain norms and regulations.

In respect to complaints made under section 217 of the Insolvency Code, IBBI exerts control over the Insolvency Professional Agency and its professionals.

Functions of an Insolvency Professional:

Following the implementation of Article 204 of the Insolvency Code on November 15, 2016, the Insolvency Professional Agency is responsible for the following:¹⁰

The essential responsibility of an insolvency professional agency is to accept insolvency experts

⁹ Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd 2021(5) SCC 624

¹⁰ Jaypee Kensington Boulevard Apartments Welfare Association D.K.Prahlada Rao, Role & Responsibility of Insolvency Professionals Under The CODE-An Analysis Vol 47, No 03, C.S.T.J.F.C.P., 124, 21 (2017)v. NBCC (India) Ltd 2021(5) SCC 624

as members.

These agencies establish the bar for professional behavior and ethics for its registered members.

The organization keeps an eye on the welfare of its members and fights for their protection.

They also find out what the member is complaining about and do something about it.

The agency conducts regular performance reviews and has the right to suspend or cancel membership.

Insolvency practitioners' duties¹¹

An insolvency professional's principal function is to evaluate a company's or organization's financial health.

The next stage is certain to go off without a hitch as soon as this one is finished.

After doing a thorough analysis, they make a decision on whether or not the company can be saved.

The following are also major duties:

In an effort to get insight into the business and evaluate its financial standing.

Schedule official meetings with clients and lenders to work on the settlement, and prepare in advance.

Another crucial duty is to confirm and verify the claims of creditors in light of the available funds. When carrying out a successful liquidation of an individual or a business, it is imperative that the assets be sold at auction.

Once liquidation expenses are covered, the leftover money can be used for fund distribution.

After doing research, you should submit a report to the National Company Law Tribunal that includes the following details:

The insolvency professional commences the process after presenting to the agency within 75 days a thorough plan and procedure for the liquidation of assets.

¹¹ Iyer, Vijaykumar and Sood, Abhishek (2019): 'Role of Resolution Professionals', Insolvency and Bankruptcy Code: A Miscellany of Perspectives, IBBI.

While the operation is still running, create a thorough report.

Comprehensive details on the disposition of assets In order to keep in touch with debtors and creditors and share relevant data with them Document the end of the dissolution procedure for the organization.

How to Choose the Right Insolvency Practitioner

Before selecting the appropriate insolvency practitioner, the following factors must be taken into account:¹²

1. The practitioner must possess a valid license.

Many of the duties required for insolvency procedures can only be performed by licensed professionals; therefore, the insolvency practitioner's license is crucial.

For instance, fulfilling the responsibilities of an administrator, liquidator, or overseer of a Company Voluntary Arrangement.

2. Experience should be possessed by the practitioner.

A prospective insolvency practitioner that one is considering hiring should be the subject of an initial consultation or conversation.

They ought to inquire about their level of experience and training in handling analogous situations or undertaking analogous actions.

If one is unconvinced that the practitioners have sufficient expertise to handle the situation, they may reevaluate their choice.

3. The Practitioner Must Instill Confidence

Regardless of the course of action selected with respect to the business, the forthcoming period will undoubtedly be eventful and arduous.

Because one may be required to work with the insolvency practitioner for an extended period of

¹² S. Rajendran & S. Srinivasan, Practical Issues Posing Challenges to the Insolvency Professionals – Does the Code Show the Road Ahead Vol 47, No 09, C.S.T.J.F.C.P., 152, 56-58 (2017)

time, it is vital to have confidence in them.

Insolvency practitioners have fiduciary responsibilities that include conducting themselves proficiently and ethically; however, prior to appointing them, one should have confidence in their ability to work harmoniously.

4. Fees for the Practitioner

In order to obtain an understanding of the fees associated with the proposed course of action for the organization, it is advisable to consult with several insolvency experts.

Numerous will offer an initial consultation at no cost and with no commitment. The fees and charges should be made explicit in this.

However, bear in mind that selecting the least expensive option is not always the best option.

Qualification and Experience Needed to Become an Insolvency Professional

Registration with the Insolvency Professional agency is a prerequisite for all applicants. The candidacy for registration as an insolvency professional requires the possession of the subsequent credentials and experience:

A successful completion of either the National Insolvency Examination or the Limited Insolvency Examination is mandatory. To qualify for the latter, candidates must possess 15 years of managerial experience subsequent to obtaining a Bachelor's degree from a legally recognized or founded university.

Or possesses the following credentials and has passed the Limited Insolvency Examination: ten years of experience; membership in the Institute of Chartered Accountants of India as a chartered accountant; membership in the Institute of Company Secretaries of India as a company secretary; membership in the Institute of Cost Accountants of India as a cost accountant; or registration as an advocate with a Bar Council.

The burden experienced by IPs significantly impacts the adherence to the time-bound resolution process. Although concerns have been raised regarding the excessive caseloads of IPs,

deliberations are currently in progress to tackle this matter. The fees of IPs are obligated to be disclosed, thereby exposing the fact that the mean earnings per assignment differ according to the position: Rs. 10.2 lakh for a Liquidator, Rs. 5.20 lakh for an Interim Resolution Professional (IRP), and Rs. 31.6 lakh for a Resolution Professional (RP). Male intellectual property (IP) professionals earn a substantial salary premium in comparison to their female counterparts.

Challenges and Suggestions

IPs confront difficulties include the requirement for collaboration from the previous management and personnel of the corporate debtor and the lack of transparency regarding variables impacting IP recommendations. There is a growing demand for test and registration systems that can support the increasing expertise in insolvency processes. Appointment guidelines, openness, and possible changes to the examination method (with an emphasis on scenario analysis and case studies) are all proposed.

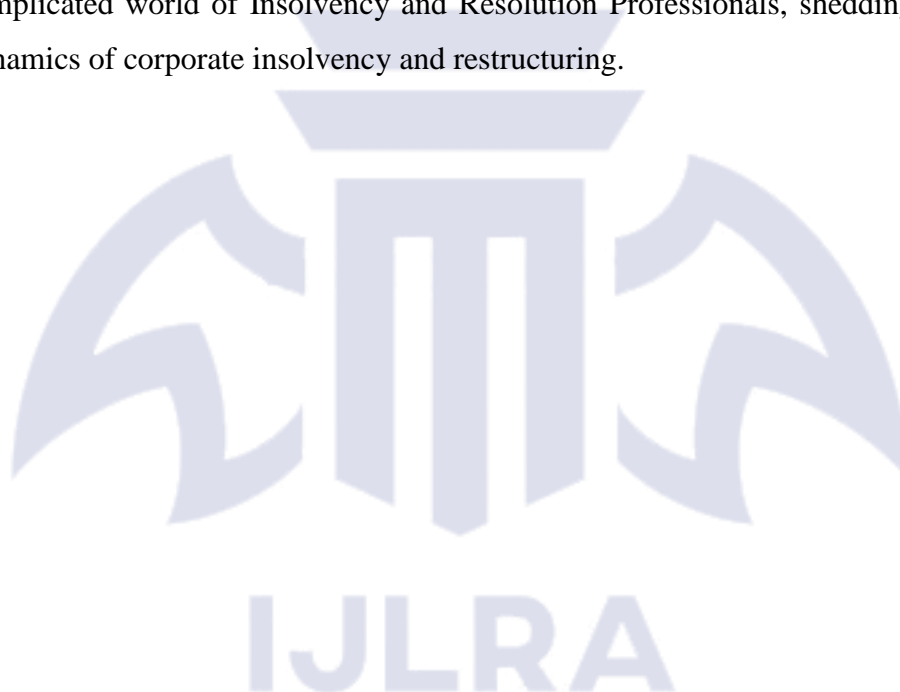
IPs in India will need to specialize their services as the Code continues to grow to take advantage of the opportunities presented by the country's changing bankruptcy law.

CONCLUSION

Insolvency resolution professionals (IRPs) and resolution professionals (RPs) have crucial responsibilities in the field of corporate insolvency and restructuring, which are explored at length in this study. The study provides a global perspective by carefully analyzing international insolvency frameworks and delves into the complexities of these professional roles,¹³ highlighting crucial tasks such as developing resolution plans, overseeing stakeholder communications, and negotiating complex legal landscapes. By analyzing problems via worldwide case studies, the research underlines the dynamic character of these jobs in responding to economic, technological, and regulatory changes. In its last section, the paper offers useful insights and recommendations that establish it as an indispensable resource for lawyers, policymakers, scholars, and professionals working in insolvency. The background offered, outlining the development of insolvency legislation in India, prepares the reader for the modern legal framework, especially the revolutionary change from the Companies Act of 1956 to the

13 “Interim Resolution Professional in CIRP” (S.S. Rana & Co.) <<https://ssrana.in/litigation/insolvency-and-bankruptcy/resolution-professional-in-cirp/>>

Insolvency and Bankruptcy Code.¹⁴ To better appreciate the critical role that Interim Resolution Professionals (IRPs) play in the early phases of the insolvency resolution process, their functions, eligibility requirements, and obligations have been spelled out in detail. A thorough comprehension of the insolvency environment is aided by an examination of the duties and responsibilities of Insolvency Professionals (IPs) and advice on how to choose the most suitable practitioner. The study also addresses issues like workload and gender pay inequalities while providing insight into the education and experience necessary to become an Insolvency Professional. In addition, the report acknowledges new difficulties and provides useful recommendations, stressing the importance of IPs adjusting and specializing in light of the changing bankruptcy legislation in India. As a whole, this study delves deeply and insightfully into the complicated world of Insolvency and Resolution Professionals, shedding light on the intricate dynamics of corporate insolvency and restructuring.



¹⁴ K Delaney, B Carruthers, T Halliday Rescuing Business: The Making of Corporate Bankruptcy Law in England and the United States Social Forces , volume 78 , issue 2 Posted: 1999