

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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ISSN

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CRITICAL STUDY OF CODE OF CONDUCT FOR INSOLVENCY PROFESSIONALS*

AUTHORED BY - SOHAM YEOLE & KALYANII TIPULE

Abstract

This article critically evaluates the function and efficacy of India's Code of Conduct for Insolvency Professionals (IPs), with a focus on implementation issues and ideas for improvement. The Code of Conduct, which aims to promote honesty, independence, and professionalism in bankruptcy proceedings, provides a critical foundation for guaranteeing fair outcomes for all parties. However, considerable barriers to its appropriate deployment exist, including stakeholder pressures, confusing legislative requirements, and insufficient monitoring measures. The study provides a thorough analysis of the complications that insolvency professionals encounter while managing competing stakeholder interests and confusing legal regulations while adhering to ethical norms. To address these problems, the article makes many proposals to improve the Code of Conduct's efficacy. By addressing these issues and adopting offered remedies, the integrity and professionalism of bankruptcy procedures may be enhanced, resulting in more equal results for stakeholders.

Keywords: Insolvency Professionals, Code of Conduct, ethical norms, stakeholders

INTRODUCTION

On 1st October 2022, Union Finance Minister Nirmala Sitaraman speaking at the sixth anniversary of the Insolvency and Bankruptcy Board of India (IBBI), said that the country could not afford to lose the “sheen” of its insolvency law, the Insolvency and Bankruptcy Code (IBC), “We must be conscious that we can’t afford IBC to lose its sheen, especially when the Prime Minister is looking at the next 25 years of India (to emerge as a developed country by 2047). We must do whatever it takes to keep IBC as sparkling as it was when it was introduced in 2016,” the Minister said, at a time when IBC numbers have shown long

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delays in cases and banks having taken deep haircuts on their outstanding claims.¹

The Insolvency and Bankruptcy Code (IBC) in India is a critical legislative framework aimed at expediting insolvency and bankruptcy processes in the country. The IBC, enacted in 2016, acts as a uniform piece of legislation that consolidates different previous insolvency and bankruptcy laws. It was enacted to remedy the inefficiencies and complexity of previous legal systems, offering a comprehensive and time-bound procedure for resolving insolvency proceedings.²

The IBC is supposed to boost investor confidence and economic growth by offering a more efficient and predictable procedure for resolving bankruptcy cases. The IBC established the Insolvency and Bankruptcy Board of India (IBBI) as the regulatory entity in charge of the code's implementation. This board is critical in ensuring that the terms of the IBC are followed and that the bankruptcy resolution process remains transparent and efficient.³

Insolvency professionals are the important part of IBC's operation since they are responsible for managing the debtor's affairs during the bankruptcy resolution process. These IBBI-regulated professionals take on a variety of tasks, including Interim Resolution Professionals, Final Resolution Professionals, and Liquidators, depending on the stage of the bankruptcy procedure. They are in charge of assisting the formulation and implementation of resolution plans, ensuring that creditors are treated fairly, and maximizing the value of the debtor's assets.

The following Article delves into the examination of the Code of Conduct governing Insolvency Professionals (IPs) in India. It scrutinizes the challenges faced in effectively implementing ethical standards and suggests measures for improvement. This exploration is essential as it navigates the complexities of Insolvency Professionals in detail and, the accountability of Insolvency Professionals analyzed with Disciplinary Committee proceedings. By dissecting the hurdles encountered in adhering to the Code, this study aims to propose actionable recommendations for enhancing the ethical fabric of insolvency practices.

¹ Munjal Diksha. "Explained | The Insolvency and Bankruptcy Code (IBC)- where does it stand today?" The Hindu, 6 Oct. 2022, www.thehindu.com/news/national/explained-what-is-the-insolvency-and-bankruptcy-code-ibc-and-where-does-it-stand-after-more-than-five-years-of-being-in-place/article65969421.ece. Accessed 6 Apr. 2024.

² ETBFSI, "What is Insolvency and Bankruptcy Code (IBC) 2016?" 21 Feb. 2020, <https://bfsi.economicstimes.indiatimes.com/news/banking/what-is-insolvency-and-bankruptcy-code-ibc-2016/74235436>. Accessed 4 Apr. 2024.

³ "The Insolvency And Bankruptcy Code In India" India Infoline, www.indiainfoline.com/knowledge-center/financial-planning/economics-for-everyone-the-insolvency-and-bankruptcy-code-in-india-and-the-national-company-law-tribunal. Accessed 4 Apr. 2024.

INSOLVENCY PROFESSIONALS

An insolvency professional is defined in Section 3(19)⁴ of the Insolvency and Bankruptcy Code as a person who is enrolled with an insolvency professional agency and registered with the Insolvency and Bankruptcy Board of India (IBBI). The registration process indicated in Sections 206⁵ and 207⁶ requires strict criteria and regulatory control.

Insolvency professionals are crucial participants in the complex world of bankruptcy and insolvency procedures, overseeing the resolution process for insolvent people, businesses, limited liability partnerships (LLPs), or partnerships. As envisioned by the Insolvency and Bankruptcy Code, these professionals play a critical role in navigating the complexity of financial crisis, guaranteeing equitable treatment of creditors, and maximising asset realization for stakeholders.

Insolvency professionals wield a diverse skill set, blending financial acumen, legal expertise, and managerial proficiency to execute their duties effectively. Insolvency professionals may save a firm from bankruptcy. Bankruptcy is on the rise worldwide, owing to poor financial management by commercial enterprises and other factors. As a result, the insolvency professionals take over the struggling company and its financial creditors as part of the resolution process. There is a significant increase in demand for these insolvency practitioners. A successful career as an insolvency expert requires a current understanding of the laws and regulations.

The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 is a distinct legislation that governs insolvency professionals. The Insolvency And Bankruptcy Board Of India (Insolvency Professionals) REGULATIONS, 2016,⁷ emerged as a critical legislative instrument for regulating and standardizing the practices of Insolvency Professionals (IPs) within the framework of India's Insolvency and Bankruptcy Code (IBC).

These laws, enacted concurrently with the IBC, serve as a complete guidebook outlining the duties, responsibilities, and ethical obligations of intellectual property holders, assuring the efficacy and integrity of bankruptcy procedures. The provisions, which are enforced by the bankruptcy and Bankruptcy Board of India (IBBI), constitute a coordinated attempt to expedite the bankruptcy resolution process, boost investor confidence, and promote economic stability.

⁴ Section 3(19), THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

⁵ Section 206, THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

⁶ Section 207, THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

⁷ Vide Notification No. IBBI/2016-17/GN/REG003, dated 23rd November, 2016 published in the Gazette of India, Extraordinary, Part III, Sec.4, vide No. 424, dated 23rd November, 2016 (w.e.f. 29.11.2016).

At its heart, the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, attempts to build a strong regulatory framework guiding IP conduct, promoting transparency, responsibility, and professionalism in insolvency processes. It defines the qualifying conditions for persons wishing to register as IPs, including residence requirements, educational credentials, and professional experience standards. Furthermore, the regulations describe the procedural criteria for IP registration, which include examination clearing, agency enrollment, and completion of pre-registration educational courses. By setting severe entrance barriers and competency criteria, the laws aim to guarantee that only qualified and competent practitioners handle the complexity of bankruptcy resolution, protecting stakeholders' interests and maintaining the insolvency process's purity.⁸

ELIGIBILITY OF INSOLVENCY PROFESSIONALS

The qualifying requirements for becoming an insolvency professional (IP) in India are detailed to ensure that persons have the requisite qualifications, experience, and character to perform the obligations of the post. The qualifying requirements are further elaborated below:

Residency: The person must be a resident of India, highlighting the importance of local knowledge and familiarity with Indian bankruptcy laws and procedures.

1. **Age:** Although no exact age limit is included in the requirements, persons must be of legal age and not deemed children.
2. **Solvent Status:** The candidate must be solvent, which means they are not currently in insolvency proceedings or have asked to be declared insolvent. This guarantees that IPs are financially solid and not hampered by personal financial difficulties.
3. **Mental Fitness:** Throughout the insolvency process, candidates must be of sound mind, able to make logical decisions and use their judgment with effectiveness.
4. **Requirements:** The candidate must meet the requirements for experience and qualifications set forth by the Indian Bankruptcy and Insolvency Board (IBBI). Although particular requirements may differ depending on the registration pathway selected, generally recognized backgrounds consist of:
 - i. **Professionals:** Those who have worked as advocates, cost accountants, company secretaries, or chartered accountants for at least ten years are qualified. Furthermore qualified are those who hold a master's degree or post-graduate diploma in management and have ten years of managing experience, as well as graduates with ten years of experience in the legal or management domains.

⁸ "Insolvency Professionals- Meaning, Eligibility, Functions, Types, Acts" *Especia* , 28 Nov. 2022, <https://especia.co.in/post/insolvency-professionals/>. Accessed 6 Apr. 2024.

- ii. Young Professionals: Candidates with fewer than ten years of experience or no experience may still be eligible for structured programs. For example, persons with limited experience must complete the Graduate Insolvency Programme (GIP).
5. Legal History: Candidates must not have been convicted by a competent court of any offense punishable by imprisonment for more than six months or involving moral turpitude. Furthermore, a period of five years must have passed since the fulfillment of any sentence imposed.
6. Fit and Proper Person: This criterion is subjective, assessing the candidate's general character, integrity, and professionalism. Regulatory agencies analyze whether the individual is fit and proper to serve as an IP, considering variables such as past conduct, reputation, and adherence to ethical standards.⁹

Becoming an Insolvency Professional (IP) follows several pathways depending on experience level. For seasoned professionals (Chartered Accountants, Company Secretaries, Cost Accountants, and Advocates) or graduates with extensive experience, the process consists of passing the Limited Insolvency Examination (LIE), enrolling with an Insolvency Professional Agency (IPA), completing a pre-registration educational course, and applying for registration as an IP. Younger professionals follow a similar path, beginning with the Graduate Insolvency Programme (GIP) and on to the LIE and IPA enrollment. The National Insolvency Programme, which the Board will unveil, will play an important role. Notably, only professional and management expertise are evaluated for assessing eligibility for intellectual property designation.¹⁰

ROLES AND RESPONSIBILITIES OF INSOLVENCY PROFESSIONALS IN INDIA

The Interim Resolution Professionals, Liquidators, Resolution Professionals, and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2023, were issued on 8-12-2023, and provide guidelines and procedures for preparing a panel to recommend the name of an IP to act as an IRP, liquidator, RP, or bankrupt trustee. IBBI will bill 'expression of interest' from Insolvency Professionals. The IP is needed to apply in the stated form by December 25, 2023. These recommendations are effective for six months. IBBI released a tentative list of (IP) on June 27, 2023, in accordance with previously issued standards. A new list will be produced on December 29, 2023, and will be valid after January 1, 2024.

⁹ IBBI, "Insolvency And Bankruptcy Board Of India Frequently Asked Questions-Insolvency Professionals," https://ibbi.gov.in/uploads/register/FAQs%20on%20Registration%20as%20an%20Insolvency%20Professional_08_02_2023.pdf. Accessed 6 Apr. 2024.

¹⁰ Singh, Vijay Kumar. "Modern Corporate Insolvency Regime in India: A Review". 2021 NLS BUS. L. REV. 22, 2021. Accessed 4 Apr. 2024.

According to the Insolvency and Bankruptcy Code 2016 (IBC 2016), insolvency professionals play a significant role in the Corporate Insolvency Resolution Process (CIRP).¹¹ They are licenced professionals who serve as resolution professionals (RPs) or interim resolution professionals (IRPs). Oversee and manage the corporate debtor's affairs during the CIRP. An insolvency professional's key tasks include¹²:

1. Insolvency experts, known as resolution professionals (RPs) or interim resolution professionals (IRPs), take control of the corporate debtor's administration and activities upon appointment. They take on the role of the board of directors, ensuring the company's actions benefit all stakeholders. They make decisions, manage operations, and protect assets during the CIRP.
2. Conducting Due Diligence: Insolvency professionals evaluate the financial status, activities, and assets of corporate debtors. This includes analysing financial accounts, contracts, legal agreements, and other pertinent papers. They gather facts and insights to create an effective resolution strategy that tackles the company's financial crisis and maximises value for stakeholders.
3. Asset Management: Insolvency experts manage and preserve corporate debtors' assets during the CIRP process. They take necessary safeguards to protect assets against unlawful disposal or encumbrance. The resolution strategy may include assessing asset value, exploring monetization options, and deciding whether to use or sell assets.
4. Collecting Creditor Claims: Insolvency professionals ask creditors to submit their claims within a set timeframe. They validate received claims and keep track of creditors' claims. The information gathered on creditors and their claims determines their voting rights in the Committee of Creditors (CoC).
5. Organising CoC Meetings: Insolvency experts organise and lead meetings of financial creditors (CoC). They provide CoC members with relevant information and updates, facilitate discussions, and seek consent on important topics. These meetings allow creditors to engage in decision-making, assess resolution plans, and make critical choices concerning the corporate debtor's future.
6. Managing Stakeholder Communications: Insolvency experts facilitate communication between corporate debtors, creditors, the CoC, and the National Company Law Tribunal

¹¹ Kothari Vinod & Bansal Sikha, "Role Of Insolvency Professionals In Corporate Insolvency Resolution Process", Vinod Kothari, <https://vinodkothari.com/wp-content/uploads/2019/06/Role-of-IP-in-CIRP.pdf>. Accessed 6 Apr. 2024.

¹² Rao, "Role & Responsibility Of Insolvency Professionals Under The Code-An Analysis," ICSIIIP, [https://icsiiip.in/panel/assets/images/research_articles/16331692499424Articles%20\(Sep.%202016\).pdf](https://icsiiip.in/panel/assets/images/research_articles/16331692499424Articles%20(Sep.%202016).pdf), Accessed 6 Apr. 2024.

(NCLT). They efficiently transmit pertinent information, choices, and updates to all parties involved, promoting transparency and efficient collaboration.

Insolvency professionals support the CoC in reviewing resolution proposals provided by potential applicants. They examine proposals objectively, focusing on feasibility, viability, possible impact on stakeholders, and alignment with IBC 2016 objectives. The CoC relies on their advice and research to determine a resolution strategy that best serves all stakeholders.¹³

CODE OF CONDUCT FOR INSOLVENCY PROFESSIONAL

The Code of Conduct for Insolvency Professionals serves as a comprehensive framework of ethical guidelines aimed at fostering honesty, independence, professionalism, and accountability throughout insolvency proceedings. It encompasses various principles and standards that Insolvency Professionals (IPs) are obligated to adhere to in their professional conduct. These include maintaining integrity, independence, and impartiality, representing correct facts, ensuring timeliness, managing information effectively, preserving confidentiality, adhering to occupational restrictions, and managing remuneration and costs transparently¹⁴. By following these principles, IPs uphold the integrity of the insolvency process, instill trust among stakeholders, and ensure fairness in decision-making and outcomes. This is a thorough breakdown¹⁵:

- 1. Integrity and Objectivity (Principles 1-4):** “IP must act with objectivity in his professional dealings ensuring decisions are made without any bias, conflict of interest, coercion etc., leading to clean conduct before various authorities including the Adjudicating Authority.”¹⁶ Integrity and objectivity are critical for insolvency professionals (IPs). They must maintain honesty, openness, and integrity during all encounters. Misrepresentation is absolutely banned, and intellectual property owners must remain objective, free of prejudice or conflict of interest. Intellectual property owners must quickly declare any conflicts of interest. These principles enhance IPs' reputation and trustworthiness in conducting bankruptcy procedures, promoting openness and justice throughout the process, the following can be reiterated in the cases that “Insolvency Professional must act with objectivity and maintain integrity by being

¹³ Gattani, Vaibhav and Dolly Chhabda. “An Analysis of Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code 2016”. 3 INDIAN J. INTEGRATED RSCH. L. 1, 2023. Accessed 4 Apr. 2024.

¹⁴ Shukla, Poonam. 27 Jan. 2020, https://icsiip.in/panel/assets/images/code_of_conduct_icsi_iip/16317811894076CODE%20OF%20CONDUCT%20FOR%20INSOLVENCY%20PROFESSIONALS.pdf, Accessed 2 Apr. 2024.

¹⁵ 18 Apr. 2022, www.iiipicai.in/wp-content/uploads/2022/04/www.iiipicai.in/wp-content/uploads/2022/04/Guidance-on-Code-of-ethics-web-.pdf. Accessed 1 Apr. 2024.

¹⁶ Basavaraj Koujalagi & 82 others v. Sumit Binani, liqui dator of Gujarat NRE Coke Limited [Company Appeal (AT) (Insolvency) No. 731 of 2021].

honest, straightforward and forthright in his all-professional relationships and has to act with reasonable care and has to follow due care and the provisions of the IBC.”¹⁷

In *Sandeep Kumar Gupta v. In re*¹⁸, the resolution professional failed to ensure that the CoC made a judgement within 180 days, forcing the corporate debtor into liquidation. The resolution professional received a penalty equivalent to the fee. He was required to complete a pre-registration educational course.

2. **Independence and Impartiality (Principles 5-8A):** Independence and impartiality are critical for insolvency practitioners (IPs). They must remain independent of external forces and avoid acquiring the debtor's assets. It is necessary to disclose any ties that might jeopardise one's independence. IP holders are also barred from influencing decisions for personal gain. These principles protect the integrity of bankruptcy processes, promote justice and impartiality in decision-making, and maintain public faith in the insolvency profession. As stated in an IBBI disciplinary committee that, “IP at all times must abide and comply with the IBC and regulations framed thereunder. IP shall not at any time, use the resolution plan as tool for OTS/ Recovery plan to off claims of various creditors. IP shall maintain complete independence in his conduct during the CIRP and shall not involve in any collusion with the RA and the CoC to vitiate the process and frustrate the solemn objective of the Code.”¹⁹
3. **Professional Competence (Principle 10):** They must constantly improve their experience and abilities in order to provide competent professional services. This dedication to continuous learning ensures that intellectual property professionals keep current on developing laws, regulations, and best practices in bankruptcy procedures. Prioritizing professional development allows IPs to efficiently traverse difficult settings, give informed advice to stakeholders, and maintain the highest levels of competence and competency in their professions. Disciplinary Committee “IP shall discharge his statutory responsibilities as IRP/RP and must be aware, maintain and upgrade his professional knowledge and skills to render services under this Code. Mere registration as IP without knowledge of the Code will not serve the purpose of fulfilling the solemn objective of the Code”²⁰
4. **Representation of Correct Facts and Correcting Misapprehensions (Principles 11-12):** IPs are responsible for swiftly correcting any disinformation and maintaining openness in their contacts with stakeholders. This guarantees that all parties involved have access to

¹⁷ NCLT, New Delhi Bench-III C.P. No. 2891/I&BP/2019, Order dated 04.09.2020.

¹⁸ *Sandeep Kumar Gupta v. In re* (2018) 151 SCL 101.

¹⁹ IBBI Disciplinary Committee Case No. IBBI/DC/12/2018, Order dated 12.11.2018.

²⁰ IBBI Disciplinary Committee Case No. IBBI/DC/14/2018, Order dated 28.01.2019.

correct information throughout the bankruptcy process, which promotes confidence and dependability. In one of the case the disciplinary committee stated that, “No person other than IP shall render services under the Code. To gain undue advantage IP cannot misrepresent facts and any vendor promoting website cannot publish statements on his own unless specifically instructed.”²¹”

In *Kapil Goel. In re*²², the insolvency professional formed an LLP called ‘IBBI Insolvency Practitioners LLP’. It was determined that this provided stakeholders the incorrect impression that the LLP had been incorporated by IBBI. The IP was instructed to erase the name of the LLP from the master data, and his registration was stopped for three months.

5. **Timeliness (Principles 13-14):** “The IBBI is extremely particular about the judicious use of time and resources of all stakeholders involved in the CIRP and expects diligence of the highest level from IPs at all times. Breaking a substantive resolution into many resolutions is not encouraged which has the potential to create indecision, delay and wastage of resources.”²³ So to achieve deadlines, IP’s must stick to certain timelines and rigorously plan their actions. By avoiding malpractice and neglect, intellectual property professionals may guarantee that bankruptcy processes go smoothly, minimising delays and optimising outcomes for stakeholders. Adherence to established timetables is critical for preserving efficiency and effectiveness in the bankruptcy process.
6. **Information Management (Principles 15-17):** They are responsible for establishing clear and timely communication with stakeholders while being transparent throughout the process. IPs must rigorously document judgements and supporting evidence, keeping detailed records. Private contact is confined to required occasions to maintain the proceedings’ integrity and impartiality. By adhering to these standards, IPs encourage productive collaboration, reduce misconceptions, and maintain the legitimacy of the insolvency process.
7. **Confidentiality (Principle 21):** By the CIRCULAR NO.IP (CIRP)/007/2018, IPs (Insolvency Professionals) must maintain strict confidentiality.²⁴ They are required to maintain the confidentiality of information relating to insolvency proceedings, unless required by law or with the approval of relevant parties. This protects sensitive data while also maintaining the trust and confidence of all parties participating in the process. By

²¹ IBBI Disciplinary Committee Order No. IBBI/ Disc. Com./2017/1 (F. No. IBBI/IP/DC/2017/29/1), Order dated 15.11.2017.

²² Kapil Goel. In re (2018) 150 SCL 231.

²³ IBBI Disciplinary Committee Case No. IBBI/DC/16/2019, Order dated 17.04.2019.

²⁴ CONFIDENTIALITY OF INFORMATION RELATING TO PROCESSES UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016, CIRCULAR NO.IP (CIRP)/007/2018, 2018.

maintaining secrecy, IPs protect the integrity and fairness of bankruptcy procedures, creating an atmosphere favourable to successful settlement and collaboration among parties. “IP should obtain a confidentiality undertaking from the directors who participate in CoC and has received Resolution Plan”²⁵

In *Ashwini Mehra, In re*²⁶, the Resolution Professional exchanged a private document with the targeted party prior to the Invitation of Expression of Interest. Furthermore, he paid the lender's legal counsel and auditor from IRP charges, despite IBBI's prohibition on authorising expenditures incurred by a member of the CoC or a professional hired by them. As a result, the registration of RP was stopped for six months.

8. **Occupation, Employability, and Restrictions (Principles 22-24):** Occupation, employability, and restrictions are critical factors for insolvency professionals. They must successfully manage their workload to provide high-quality services while avoiding conflicts of interest. IPs are banned from working in positions that may jeopardise their capacity to conduct their duties impartially. Furthermore, there are limits on employment following engagement in insolvency proceedings to avoid any conflicts of interest. These principles guarantee that IPs remain independent, preserve professional integrity, and prioritise the best interests of stakeholders throughout the insolvency procedures.
9. **Remuneration and Costs (Principles 25-27):** Remuneration and Costs guidelines require IPs (Insolvency Professionals) to be transparent about their fees, ensuring they are reasonable and accepted by relevant parties. IBBI published circular No. IBBI/IP/013/2018, regarding fees to be charged by insolvency professionals and other expenditures. Fees should be modest. Fees and costs must be authorised by CoC. Fees should be mentioned. The circular clearly specifies what costs are and are not eligible for CIRP.²⁷ They must also disclose all expenses to stakeholders, ensuring that they are reasonable and consistent with the services supplied. By adhering to these principles, IPs preserve financial integrity, build confidence with stakeholders, and ensure justice in the allocation of insolvency expenses. Transparent disclosure of fees and charges encourages responsibility and builds trust in the bankruptcy process. “Fee as per Regulation 4 of Liquidation Process Regulations, 2016 is very clear on

²⁵ Supreme Court of India in Civil Appeal No. 8430 of 2018, Order dated 31.01.2019.

²⁶ *Ashwini Mehra, In re* (2020) 117 taxmann.com 564 (IBBI).

²⁷ CIRCULAR NO.IBBI/IP/013/2018, FEE AND OTHER EXPENSES INCURRED FOR CORPORATE INSOLVENCY RESOLUTION PROCESS

liquidator's fee and IP, by disregarding the provisions of the Regulation cannot display casual attitude and lack of his understanding of the law.”²⁸

In *Bhavna Sanjay Ruia, In re*²⁹, the IRP quoted a cost of Rs 13.75 crores, which was excessive and unjustified. It was determined that IRP had violated the Code of Conduct for Insolvency Professionals. Registration of IRP was to be stopped for a year.

10. **Gifts and Hospitality (Principles 28-29):** The Gifts and Hospitality Principles require that IPs (Insolvency Professionals) and their family refrain from receiving gifts or hospitality that might jeopardise their independence. Similarly, they are barred from giving gifts or perks in exchange for employment or favours. These principles protect the integrity and impartiality of intellectual property, ensuring that their choices and actions are not swayed by undue external circumstances. By following these recommendations, IPs may retain trust and confidence in the insolvency process, ensuring its fairness and legitimacy.

The Code of Conduct for Insolvency Professionals provides a comprehensive framework of ethical guidelines aimed at fostering honesty, independence, professionalism, and accountability throughout insolvency proceedings. By adhering to principles such as integrity, independence, and professional competence, IPs uphold the integrity of the process, instill trust among stakeholders, and ensure fairness in decision-making. Through transparent communication, timely actions, and confidentiality measures, IPs promote transparency and reliability in insolvency procedures. They must manage their workload ethically, disclose fees transparently, and abstain from conflicts of interest or accepting inappropriate gifts. These principles collectively safeguard the integrity and impartiality of IPs, maintaining public confidence in the insolvency profession and fostering successful outcomes in insolvency proceeding.

DISCIPLINARY COMMITTEE

But what if the insolvency professionals don't adhere to the responsibilities or code of conduct, The Insolvency and Bankruptcy Board of India (IBBI) has implemented a disciplinary structure to reduce the potential of insolvency professionals misusing their powers or going beyond their mandates. The Disciplinary Policy (for short "Policy") of IPA-ICAI is consistent with the provisions set out in Part X of the Schedule under the IBBI Model Bye-Laws Regulations.³⁰ The formation of a Disciplinary Committee, made up of seasoned professionals with competence in insolvency law, ethics, and professional behavior, is crucial to this system. This committee

²⁸ IBBI Disciplinary Committee Case No. IBBI/DC/22/2020, Order dated 21.04.2020.

²⁹ Bhavna Sanjay Ruia, In re [2018] 95 taxmann.com 193 (IBBI).

³⁰ www.ipaicmai.in/IPANEW/Uploadfiles/LawPolicy/LL_17082022104145.pdf, Accessed 6 Apr. 2024.

operates independently and impartially, maintaining its integrity and credibility when processing complaints and beginning procedures against insolvency practitioners. Its primary responsibilities include reviewing complaints received from anyone or initiated suo moto by the IBBI, conducting thorough investigations into alleged misconduct or violations of the Code of Conduct for Insolvency Professionals, and holding hearings where both the insolvency professional and the complainant can present their cases.

In the case of *Sanjay Kumar Agarwal v. Central Bureau of Investigation, Anti-Corruption Bureau, Dhanbad*³¹ the Insolvency Professional was found taking bribe to favour a party. It was held that IP is 'public servant' within the meaning of section 2(c)(viii) of Prevention of Corruption Act and hence Prevention of Corruption Act is applicable to him. As what he is doing is 'public duty'.

Throughout the procedures, the committee follows the principles of natural justice and due process, allowing the insolvency professional to defend themselves and reply to claims. Transparency is maintained, with stakeholders kept updated on the status and outcomes of procedures while confidentiality standards are met. Timeliness is also emphasised, balancing the requirement for thorough investigations with the fast disposal of complaints to provide prompt justice. In terms of sanctions and remedies, the Disciplinary Committee has the right to apply a variety of consequences according to the degree of misbehaviour, including warnings, fines, suspension, or revocation of the insolvency professional's licence.³²

The committee also analyses measures for aggrieved parties, such as compensation or corrective actions, to reduce the harm caused by the misbehaviour. It assures that insolvency professionals are protected for activities performed in good faith, as stipulated by the Insolvency and Bankruptcy Code (IBC), shielding them from excessive accountability for decisions made while performing their obligations. To improve accountability and sustain ethical standards, processes for ongoing monitoring and evaluation are in place. The disciplinary framework is assessed on a regular basis to find opportunities for improvement and address developing issues in regulating the behaviour of insolvency practitioners. Periodic audits and performance assessments are

³¹ Sanjay Kumar Agarwal v. Central Bureau of Investigation, Anti-Corruption Bureau, Dhanbad, [2023] 149 taxmann.com 146 (Jharkhand)].

³² Kumar, Dhananjay and Gautam Sundaresh. "Insolvency Professionals under India's New Insolvency Regime,". EMERGING MARKETS RESTRUCTURING JOURNAL ISSUE NO. 8 — WINTER 2018–2019, 2019. Accessed 4 Apr. 2024.

required to verify continued compliance with ethical standards and the Code of Conduct. By establishing a strong disciplinary committee with clear protocols, fair processes, and effective consequences, the IBBI improves accountability in the insolvency profession. This guarantees that bankruptcy procedures are carried out with integrity, openness, and professionalism, building trust and confidence in the insolvency regime among stakeholders, creditors, debtors, and the general public.

CRITICAL ANALYSIS OF THE CODE OF CONDUCT OF INSOLVENCY PROFESSIONALS IN INDIA

Notwithstanding the broad requirements outlined in India's Code of Conduct for Insolvency Professionals (IPs), significant problems remain in ensuring its effective implementation. These obstacles are mostly due to difficulty in implementing ethical norms and maintaining consistent adherence to the Code across several bankruptcy instances. Furthermore, the absence of standardised mechanisms for monitoring and regulating IP behaviour exacerbates these issues. The challenges of implementing the Code of Conduct for Insolvency Professionals necessitate concerted efforts to strengthen enforcement mechanisms, provide comprehensive training, establish clearer protocols for addressing conflicts of interest, and promote increased transparency in the insolvency process.³³

One key problem is enforcing ethical norms, especially when IPs are under pressure from stakeholders or face challenging ethical quandaries. The bankruptcy process frequently involves numerous parties with opposing interests, such as creditors, debtors, and other stakeholders. In such instances, IPs may encounter contradictory demands or expectations, making it difficult to maintain the impartiality and independence required by the Code of Conduct. Creditors, for example, may pressure IPs to prioritize their interests above others, possibly jeopardizing the bankruptcy procedures' integrity. Let us understand with an illustration in a high-profile insolvency case involving a large manufacturing company, the appointed IP faced intense pressure from different creditor groups. While some creditors advocated for liquidation to recover their debts quickly, others pushed for a resolution plan that would allow the company to continue operations. The IP found it challenging to balance these conflicting demands while upholding the

³³ Rao, Pramod, 7 Sept. 2016, www.insolindia.com/uploads_insol/resources/files/www.insolindia.com/uploads_insol/resources/files/critique-of-ibc-by-pramod-rao-1040.pdf. Accessed 6 Apr. 2024.

principles of impartiality and independence mandated by the Code of Conduct. Ultimately, the IP had to navigate delicate negotiations and mediations to reach a consensus among stakeholders, highlighting the complexities of managing diverse interests in insolvency proceedings.³⁴

Furthermore, IPs may face ethical quandaries due to vague or contradictory legal regulations, making it difficult to manage the complexity of the bankruptcy process while adhering rigorously to ethical principles. Decisions on asset distribution, resolution plans, or stakeholder agreements can provide moral quandaries for intellectual property owners, necessitating careful consideration of ethical principles and professional duties. An illustration of the situation can be given when an IP encountered an ethical dilemma stemming from ambiguous legal provisions regarding asset distribution in an insolvency case. The IP was tasked with determining the priority of claims and allocating assets among creditors, but conflicting interpretations of relevant laws and regulations complicated the decision-making process. Faced with uncertainty and potential legal repercussions, the IP sought guidance from legal experts and regulatory authorities to ensure compliance with ethical standards while resolving the dispute. This example underscores the challenges posed by unclear legal frameworks in insolvency proceedings and the importance of seeking clarity to uphold ethical conduct.

Another key difficulty is the lack of standardized mechanisms for monitoring and controlling Ips' behavior. While the Code of Conduct provides principles for ethical behavior, the lack of a consistent mechanism for assessing compliance and handling infractions impedes effective monitoring. Inconsistencies in monitoring systems across bankruptcy situations lead to differences in enforcement and accountability, compromising the regulatory framework's credibility and efficacy. Another illustration is in several insolvency cases, IPs were found to have failed to disclose conflicts of interest or maintain confidentiality as required by the Code. However, due to limited resources and capacity constraints, regulatory authorities faced challenges in effectively monitoring IPs' behavior and addressing violations in a timely manner. As a result, instances of misconduct went unnoticed or were inadequately addressed, undermining the credibility of the insolvency process and eroding public trust in the regulatory framework.

From managing conflicting stakeholder expectations to dealing with confusing legal provisions

³⁴ Manhas, Anupam. "Corporate insolvency laws: a critical analysis". 5 INT'L J.L. MGMT. & HUMAN. 1378, 2022. Accessed 4 Apr. 2024.

and insufficient supervision systems, intellectual property professionals face complex ethical quandaries that need careful analysis and commitment to ethical norms. Addressing these difficulties would include concerted efforts to tighten regulatory supervision, improve professional training and advice, and encourage greater openness and accountability in bankruptcy processes.³⁵

CONCLUSION & SUGGESTIONS

This research paper presents a complete review of the role and operation of Insolvency Professionals (IPs) in India, with an emphasis on the Code of Conduct that governs their behaviour and the obstacles experienced in its implementation. The Code of Conduct provides a critical foundation for fostering integrity, independence, and responsibility in bankruptcy proceedings, with the goal of ensuring fair results for all parties. An in-depth review of the Code of Conduct reveals that IPs play an important role in navigating the intricacies of bankruptcy proceedings, balancing the interests of numerous stakeholders, and maintaining ethical standards. However, considerable problems remain in properly applying the Code, including stakeholder pressures, confusing legislative requirements, and ineffective monitoring procedures.³⁶

Despite these challenges, efforts to strengthen enforcement mechanisms, provide comprehensive training, establish clearer protocols for dealing with conflicts of interest, and promote increased transparency in insolvency proceedings can help to improve the Code of Conduct's effectiveness and the integrity of insolvency processes. Furthermore, the development of disciplinary structures and regulatory monitoring is critical in holding intellectual property owners accountable for their actions and guaranteeing ethical compliance.

Suggestions for Improvement:

1. **Enhanced Training and Guidance:** Providing extensive training programmes and guidance materials to insolvency professionals will help them better comprehend ethical standards and regulatory obligations, allowing them to traverse complicated ethical quandaries more successfully.
2. **Standardised Monitoring systems:** Creating standardised systems for monitoring and

³⁵ Dev, Manik. "Analysis of Insolvency and Bankruptcy Code, 2016 - Procedures, Jurisprudence and Latest Amendment of 2021". 26 SUPREMO AMICUS [225], 2021. Accessed 4 Apr. 2024.

³⁶ "Guide to the Insolvency Professional Agency (IPA) in India – Role | Regulation" Responsibilities, 18 Jan. 2024, www.taxmann.com/post/blog/guide-to-the-insolvency-professional-agency-ipa-in-india-role-regulation-responsibilities. Accessed 6 Apr. 2024.

controlling IP behaviour will improve consistency and accountability in applying the Code of Conduct across several bankruptcy situations.

3. **Clarity in Legal Frameworks:** Efforts should be taken to clarify and streamline legal laws governing bankruptcy processes, therefore minimising ambiguity and enabling ethical decision-making by intellectual property owners.
4. **Transparency and Stakeholder Engagement:** Promoting openness in bankruptcy proceedings and promoting active stakeholder participation helps create trust and confidence.

The study undertaken in this article shows that, while the Code of Conduct contributes to fostering integrity and professionalism, obstacles in its implementation indicate that more adjustments are needed. As a result, the study hypothesis is partially validated, emphasising the significance of continued efforts to strengthen legal frameworks and improve ethical adherence in bankruptcy proceedings.

