

# **Handbook on Enterprise Management of Corporate Debtor by Resolution Professional**



**Committee on Insolvency & Bankruptcy Code**  
**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
**New Delhi**

**Handbook on  
Enterprise Management of Corporate Debtor  
by Resolution Professional**



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## Foreword

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The Committee on Insolvency & Bankruptcy Code constituted by The Institute of Chartered Accountants of India with an objective to create awareness amongst the members at large about the new area of practice relating to Insolvency Resolution sphere under the Insolvency and Bankruptcy Code, 2016. The Committee brings out pertinent publications as part of its knowledge dissemination initiative.

I compliment the Committee for taking the initiative in publishing "*Handbook on Enterprise Management of Corporate Debtor by Resolution Professional*" to facilitate professionals understand the important aspects of Enterprise Management which is key to conduct the Corporate Insolvency Resolution Process under IBC effectively by the Resolution Professional.

I extend my sincere appreciation of the efforts by CA. Durgesh Kumar Kabra, Chairman, CA. Sripriya Kumar, Vice- Chairperson and all other members of the Committee on Insolvency & Bankruptcy Code in bringing out this important publication.

I am confident that this publication would be of great help to the members, especially to insolvency professionals and other stakeholders.

Date: 3rd February, 2023  
Place: New Delhi

**CA. (Dr.) Debashis Mitra**  
President ICAI



## Preface

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The Insolvency and Bankruptcy Code, 2016 as we know has brought out a new regime in the debt resolution space with a paradigm shift from debtor in possession to creditor in control model. The Code has led to emergence of professional opportunities in the form of Insolvency Professionals who are an important pillar upon which rests the effective and timely functioning of the entire mechanism of the insolvency resolution process.

Since the provisions relating to Corporate Insolvency Resolution Process (CIRP) came into effect from December 1, 2016, a number of CIRPs have begun. The Insolvency Professional acting as Interim Resolution Professional/Resolution Professional play a central role in the conduct of the CIRP which includes the prime responsibility of managing the operations of the Corporate Debtor as a going concern.

The Committee on Insolvency & Bankruptcy Code of ICAI as part of its initiative in bringing relevant publications in the insolvency resolution area has brought out this publication – **Handbook on Enterprise Management of Corporate Debtor by Resolution Professional** to facilitate professionals in understanding the various functions and responsibilities while performing his duties and managing the business operations of the Corporate Debtor.

We would like to sincerely thank the President of ICAI, CA. (Dr.) Debashis Mitra and Vice President of ICAI, CA. Aniket Sunil Talati for their support and encouragement in bringing out the publication.

We would like to thank all the Committee Members for their guidance and contribution in bringing out this publication.

We would like to sincerely appreciate and thank the Group of Insolvency Professionals- CA. Abhay Narayan Manudhane, CA. Girish Siriram Juneja, CA. Manoj Kumar Anand, CA. Jayesh Natvarlal Sanghrajka, CA. Devang P. Sampat and CA. Ashish Vyas who prepared the Draft of the publication under the Convenorship and guidance of Chairman of the Committee.

We appreciate the efforts put in by Ms. S. Rita, Secretary, Committee on Insolvency & Bankruptcy Code, ICAI, CA. Sarika Singhal, Deputy Secretary, ICAI and the Committee Secretariat comprising of CA. Abhishek Tarun, Shri Eshaan Kambiri and Ms. Sarita Aggarwal for providing their technical and administrative support in bringing out this publication.

We are confident that the members of the profession, especially insolvency professionals and other stakeholders will find the publication very helpful.

**CA. Durgesh Kumar Kabra**  
Chairman  
Committee on Insolvency &  
Bankruptcy Code, ICAI

**CA. Sripriya Kumar**  
Vice- Chairperson  
Committee on Insolvency &  
Bankruptcy Code, ICAI

Date: 3rd February, 2023

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# Chapter 1

## Enterprise Management: Basic Aspects and Role

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### Background

The Insolvency and Bankruptcy Code, 2016 (“the Code” or “IBC”) has been a huge game changer in the process of managing stressed assets. The Code ushered in a new era in insolvency resolution arena where the control of the business of the Corporate Debtor (CD) has shifted to the creditors.

One of the key objectives of the Code is to revive the business of the corporate debtor. The revival of the stressed and ailing business is intended to help grow the national economy.

The Resolution Professional (RP) appointed under the Code is expected to get into the shoes of the CEO/Managing Director and effectively manage the business of the Corporate Debtor, make efforts to address the difficulties being faced by the Corporate Debtor and maximise the value of the stakeholders.

Generally, the time when the Resolution Professional dons the mantle of the Chief of the business, there are several issues to be dealt with. The Resolution Professional navigates the process, controls the situation and keeps resolving the issues while managing the operations of the Corporate Debtor as a going concern and also aims that the Corporate Insolvency Resolution Process (CIRP) culminates in resolution rather than liquidation.

Thus, it is evident that effective Enterprise Management is key to the conduct of Corporate Insolvency Resolution Process.

### Basic Aspects of Enterprise Management

The term 'enterprise' essentially refers to the business carried on with the objective of earning profit either in terms of money or in terms of creation of wealth. Without profit element, an enterprise may not be able to sustain for longer time as availability of funds is always an important limiting factor and enterprise will never be able to sustain unless funds are generated.

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For successfully operating the enterprise, prime objectives of entrepreneur are:

- Cost recovery
- Value Addition
- Profit

Undoubtedly, it is evident that while operating the enterprise, the entrepreneur has to ensure that he recovers all the costs, direct or indirect, and he has to keep in mind that at least normal day to day expenses and business overheads are recovered. It may be possible that in the initial days of setting up an enterprise, the entrepreneur may not be able to recover the expenses that he incurred, nevertheless in long term he has to recover the direct and indirect costs to sustain the enterprise.

It is the need of the day to run the enterprise “professionally” by hiring the experts and assigning them the required task which has given rise to “professionally managed business enterprise” concept. However, it is essential that the entrepreneur ensures that the operations of the business enterprise are conducted effectively, as the responsibility for success or failure of the business enterprise lies on him.

Whilst the principles of managing the enterprise during CIRP is almost similar to that of managing enterprise by the entrepreneur, the basic difference during CIRP is that the responsibility of managing affairs of the enterprise lies with Interim Resolution Professional (IRP) or Resolution Professional (RP) who is new to the enterprise and who has to understand the business and learn the skill to run the business. Moreover, the task of the IRP/RP is not only to manage the business and ensure it continues as a going concern, but to think forward as to how he can arrive at resolution and that too in time bound manner. Further, all the actions of IRP/RP are under overall supervision of Committee of Creditors (CoC) and wherever required he needs requisite approval.

Invariably, the enterprise which IRP/RP has to manage is cash starved and managing the affairs of such an enterprise, though for a short period, gives an opportunity to IRP/RP to work on ways to overcome the challenges. At this stage, the advantage that IRP/RP has is imposition of moratorium which includes prohibition on institution of suits or continuation of pending suits, etc. In this crucial period IRP/RP has to ensure that the business of the

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enterprise is smoothly carried on which can only attract prospective resolution applicant for getting successful resolution.

During past six years since Insolvency and Bankruptcy Code has been introduced, some RPs were able to achieve positive EBIDTA during CIRP. As a result, the RPs were able to attract the resolution applicants and arrive at the resolution plans. The success of IRP/RP in operating the enterprise effectively depends on personal skill, expertise and understanding the business intricacies. The experience of professionals who had managed corporate entities earlier during their career could also help in dealing enterprise effectively during CIRP.

### **Role of Enterprise Management during CIRP and Liquidation**

As soon as the Adjudicating Authority (AA) admits application for commencement of CIRP, appointment of Interim Resolution Professional takes place. From the date of appointment of the interim resolution professional, the management of the affairs of the Corporate Debtor vest in the interim resolution professional. This comes with the suspension of the powers of the existing Board of Directors of Corporate Debtor and with the direction to existing officers and managers of the Corporate Debtor to report to the interim resolution professional and give him the access to documents and records of the CD.

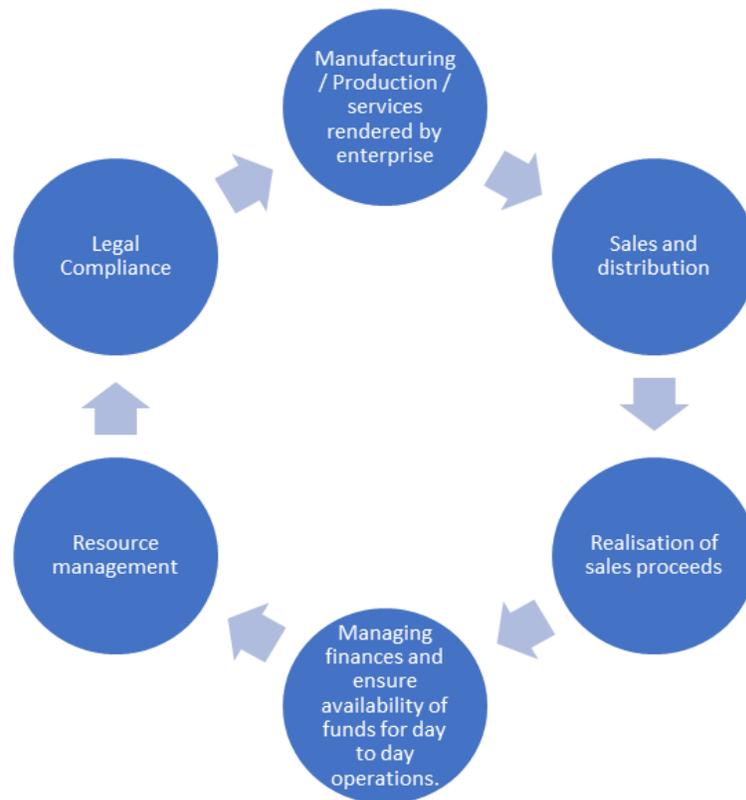
As a prudent professional, IRP is required to meet all the senior officials of the enterprise and make everyone aware that from the date of passing of the order of AA, he has replaced the Board of Directors and the affairs of the enterprise will be managed by him. It is necessary for him to make such announcement and depending on the circumstances, he may be required to issue written communication. Apart from this, he is statutorily required to make Public Announcement in Form A within 3 days as provided in the Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The Code also gives directions to the financial institutions maintaining accounts of the corporate debtor to act on the instructions of the Interim Resolution Professional in relation to the accounts of Corporate Debtor with them. The financial institutions also need to furnish all information relating to the corporate debtor available with them to the interim resolution professional.

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On completion of basic requirements, the real task of the IRP is to effectively manage the affairs of the enterprise besides completing various procedures like inviting claims, formation of Committee of Creditors (CoC) etc. till his appointment is confirmed as Resolution Professional (RP) or another person takes charge as RP. It is therefore essential for IRP/RP to understand enterprise that he is required to handle at macro level and decide course of action he has to take for managing the enterprise during the CIRP period.

Typically managing an enterprise involves control over:



From the list of activity that IRP / RP is required to manage during CIRP period, it is clearly evident that IRP / RP is not only required to utilize his business acumen but may also need to have sufficient techno commercial skills or may develop such skill for successfully managing enterprise.

## **Enterprise Management: Basic Aspects and Role**

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When a Company is admitted to Insolvency process, there are apprehensions in the mind of the stakeholders including the customers, vendors and employees. It is important that the IRP/RP communicates about the Corporate Insolvency Resolution Process to the stakeholders. The customers have to be assured that they will continue to get their requirements fulfilled and the IRP/RP will be making all efforts to ensure that the company operates as a going concern.

The confidence of the vendors has to be won to continue supply of goods and services. They need to be assured and informed that while their dues as on the Insolvency Commencement Date (ICD) will be paid as per the CIRP and the amounts due to the vendors for supplies made by them during the CIRP have the first priority at the time of resolution and will be paid as CIRP costs in priority over the secured lenders. Undeniably, without the support from the vendors, it is practically impossible to continue the business of the Corporate Debtor. To ensure the continuous supply, at times the IRP/RP may have to reach out to the Adjudicating Authority if suppliers of essential services such as electricity, power and fuel, water, etc are refusing to provide continued supplies due to non-payment of dues as of the ICD.

People are the biggest asset of the business. For the IRP/RP building trust among employees becomes crucial and they need to be assured that commencement of CIRP is part of resolution process. Also, it is important for the IRP/RP to retain the talent and he may lay the importance of performance oriented working.

While IRP/RP has to nurture the good talent and give them opportunity to add value and assist him in managing the day to day affairs, it is possible that the IRP/ RP may have to replace or recruit some key personnel or if required IRP/RP may also hire Industry experts. It is important to understand that changes in Key Personnel and engaging industry experts need the approval of the Committee of Creditors.

Nonetheless, the IRP is also equipped with the responsibility to collect all the information relating to the assets, finances and operations of the corporate debtor which is required for determining the financial position of the corporate debtor, including information relating to –

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Here, it is important to understand that the Interim Resolution Professional (IRP) takes control and custody of all the assets over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets which includes the following:

- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;
- (ii) assets that may or may not be in possession of the corporate debtor;
- (iii) tangible assets, whether movable or immovable;
- (iv) intangible assets including intellectual property;
- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;
- (vi) assets subject to the determination of ownership by a court or authority;

Also, the Code has specifically explained that the following items should not be included as “assets” while taking control and custody

- (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;
- (b) assets of any Indian or foreign subsidiary of the corporate debtor; and
- (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

Along with various responsibilities delegated to IRP/RP; Section 19(1) of the Code provides that the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor

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shall extend all assistance and cooperation to the insolvency professional as may be required by him in managing the affairs of the corporate debtor.

In general, the changes are always challenged at first, until the reasoning and logics of changes are properly explained and accepted.

The practical aspect which works here varies based on various attributes like size of enterprise, location of enterprise, skills of worker/ employee, age of enterprise and other parameters. Therefore, the solutions for handling such enterprise also needs to be worked out by Insolvency Professional accordingly. Since it is the duty of Insolvency Professional to safeguard assets of the corporate debtor, he needs to take care of the security arrangement at manufacturing units and the locations of the CD. Also, it has been observed in few cases, the Insolvency Professional in order to ensure safeguarding of assets of corporate debtor, strengthens controls around dispatches, ensures segregation of duties and verifies effectiveness of the designed controls.

The challenges faced by the IRP/RP in enterprise management under CIRP are dynamic, complex and difficult. The provisions of IBC are strong and support the IRP/RP in his endeavour and give him the required authority and confidence. There are several instances where the Adjudicating Authority come to the rescue of the RP and help to remove the obstacles faced by him.

While ensuring the management of operations of corporate debtor is maintained as going concern, Section 20 of the Code empowers the interim resolution professional to make every endeavour to protect and preserve the value of the property of the corporate debtor and thereby provides the below mentioned authority:

- a. to appoint accountants, legal or other professionals as may be necessary;
- b. to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;
- c. to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:

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Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

- d. to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and
- e. to take all such actions as are necessary to keep the corporate debtor as a going concern.

Though the IRP/RP has been provided with several responsibility and authority, however for certain actions he has to take prior approval of the Committee of Creditors, which are as under:

- a. raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;
- b. create any security interest over the assets of the corporate debtor;
- c. change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
- d. record any change in the ownership interest of the corporate debtor;
- e. give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;
- f. undertake any related party transaction;
- g. amend any constitutional documents of the corporate debtor;
- h. delegate its authority to any other person;
- i. dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;
- j. make any change in the management of the corporate debtor or its subsidiary;
- k. transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;

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- l. make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or
- m. make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

While performing his duties, the IP takes guidance of Committee of Creditors (CoC) since its decision making is critical for effective conduct of resolution process by IP. The Insolvency Professional represents and acts on behalf of the corporate debtor with third parties, and exercises rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings.

Along with managing the operation of corporate debtor he prepares the information memorandum and based on the complexity and scale of operations of the business of the corporate debtor, invites prospective resolution applicants who fulfil such criteria as may be laid down by him with the approval of CoC to submit a resolution plan or plans.

The regulations of CIRP also mandate that the resolution plan should essentially provide the following items viz the term of the plan and its implementation schedule, the management and control of the business of the corporate debtor during its term and adequate means for supervising its implementation. Accordingly, it can be said that enterprise management also works as foundation for the future of the 'Resolved Enterprise.'

For any reason, if resolution plan does not get approval of CoC, the role of Insolvency Professional gets converted in the form of Liquidator. As soon as Liquidation order is passed, Liquidator takes charge from Resolution Professional, however the Liquidator is also required to adopt all skills of enterprise management.

The Insolvency and Bankruptcy Code 2016 provides powers and duties of Liquidator which are more or less similar to that during CIRP. The Liquidator needs to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor. He needs to evaluate the assets and property of the corporate debtor and take such measures to protect and preserve the same. His duty is also to carry on the business of the CD for its beneficial liquidation as he considers necessary.

The liquidator is required to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or by private sale, and at the same time he needs to ensure that he does not sell

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the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.

The liquidator may sell-

an asset on a standalone basis

the assets in a slump sale

a set of assets collectively

the assets in parcels

the corporate debtor as a going concern

the business(s) of the corporate debtor as a going concern

If resolution of the Corporate Debtor during CIRP period does not happen probably the last two options above are the chances to evaluate and make corporate debtor live by selling either individual business or entire enterprise as going concern.

The Liquidator is authorised to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability, as if, such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business. He can take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself. The liquidator can appoint professional to obtain any professional assistance from any person in discharge of his duties, obligations and responsibilities. However, Regulation requires to ensure that the professional is independent from him or Corporate Debtor.

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In other words, the Enterprise management skill of the Insolvency Professional plays key role in operating the enterprises during CIRP and Liquidation process and building foundation in resolving the stress of enterprise in hands of the new acquirer.

Although the subject is very wide, in the ensuing chapters some of the key areas of enterprise management, role and responsibilities of RP in managing the enterprise and the challenges faced by the RP have been touched upon to enable the RP in his endeavour to successfully manage the enterprise in the Corporate Insolvency Resolution process or under liquidation process.

**Note: This Handbook is not an exhaustive compilation of matters relating to Enterprise Management by Resolution Professional but is intended to present some perspectives and ideas to facilitate understanding.**

**All the matters relating to management of affairs of corporate debtor by IRP/RP during CIRP and matters relating to liquidation process by liquidator shall be in accordance with the IBC and the regulations made thereunder.**

## Chapter 2

# The Key Areas of Enterprise Management in Corporate Insolvency Resolution Process and in Liquidation Process

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There are various areas of Enterprise Management in Corporate Insolvency Resolution Process (CIRP) and Liquidation Process which would depend on type of enterprise, size of the enterprise, scale of operations, number of locations, industry to which the enterprise belongs to, etc.

Some of such important areas of Enterprise Management in CIRP and Liquidation Process are briefly summarised as under:

1.	Education and creation of awareness of the process	<p>IBC is a business-friendly Law. 'Resolution' or 'Revival' is the core of this law.</p> <p>Hence, the education and creation of awareness of the process to all stakeholders is important for enterprise management.</p>
2.	Control of the business and assets and protection of business value	<p>This is the primary duty in "creditor in control model". Getting all the details of the assets, taking control as well as protection of business value is unique duty for an administrator or Insolvency Professional. Since, the resolution depends on these assets, if the entire business is not in control, the going concern will be affected,</p> <p>With regard to assets, the followings may be possible:</p> <ul style="list-style-type: none"> <li>✓ There may be assets of the company with third party as well as third party assets with company</li> <li>✓ The assets may have been alienated</li> <li>✓ There may be assets in associated/ related concerns or layers of companies</li> </ul>

**The Key Areas of Enterprise Management in CIRP and in Liquidation Process**

		✓ The assets may also be beyond Indian Jurisdiction
3.	Correct and dependable data and information flow	One of the major challenge is to get correct and dependable data and information flow of past and current ongoing activities. Enterprise management and decision making related to value preservation depend on this data.
4.	Human Capital Management	Change creates discomfort of uncertainty so morale building and team building needs to be done on regular basis. Efforts to be made to retain the team members with good skilled sets.
5.	Cash flow and Finance Management	<p>Cashflow and Finance Management is another key area. A Company undergoing insolvency resolution process may face issues relating to cashflow and finance, which are considered to be the lifeline of business.</p> <p>With regard to Receivables, Debtors may choose another supplier and avoid payment.</p> <p>With regard to Payables, Credit period and payment terms may change creating further working capital management issues.</p> <p>Also, there may be issues related to approval and timely receipt of Interim Finance.</p>
6.	Sales and Marketing Management	<p>Goodwill management and image of company undergoing insolvency resolution process is an aspect that needs to be taken care of. If Brand image and Goodwill gets affected, sales and collections will suffer.</p> <p>Also Marketing and after sales management, guarantees / warranties on sales need to be addressed.</p>

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7.	<ul style="list-style-type: none"> <li>• Supply Chain Management</li> <li>• Materials &amp; Purchase Management</li> </ul>	<p>Continuous and timely availability of raw material etc., business cycle duration, working capital issues, quality of material supplied to Corporate Debtor, price at which supplied as compared to pre- insolvency situation are the issues that are to be considered.</p>
8.	<ul style="list-style-type: none"> <li>• Production Management</li> <li>• Research &amp; Development</li> <li>• Maintaining large plants and Assets</li> </ul>	<p>Production planning and execution of the planned production poses a real challenge for the entrepreneur. The success of CIRP depends on the production planning, which further depends on maintenance plans. In nutshell, it is part of enterprise management to ensure that proper production planning and maintenance planning is executed in timebound manner.</p> <p>Technical knowledge and skills may be required for these activities.</p>
9.	IT Management	<p>Data of the CD has to be in safe custody and storage of data needs to be properly secured. With regard to IT Management, there could be software used by the CD which could be vital for the CD.</p>
10.	<ul style="list-style-type: none"> <li>• Legal &amp; Compliance management</li> <li>• Office and correspondence management</li> </ul>	<p>General compliances besides the Code specific compliances needs to be taken care of. When company comes under IBC, it may face litigations due to past issues that affects its functioning, and which needs to be looked into.</p>
11.	Integrating Enterprise Management with needs of the Code	<p>For effective enterprise management proper strategy needs to be adopted. For example, the CD may have planned some strategy for advertisement expenditure, but under CIRP regime, the strategy may need to be revised keeping in view the cost as well as in getting</p>

**The Key Areas of Enterprise Management in CIRP and in Liquidation Process**

		necessary value from prospective resolution applicants.
12.	Specific requirements and standards for operations	Service/ Industry specific Standards have to be maintained for enterprise management, e.g. Safety Standards, Pollution Control Standards etc.

## Chapter 3

# Role and Responsibilities of RP as CEO of the Enterprise

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It has been duly understood by all that the role played by a Resolution Professional in managing the enterprise of a Corporate Debtor is extremely crucial. This well-known fact was also recognized by Bankruptcy Law Reforms Committee in its Report, distinguished law makers and various other institutions who have made the statements on the prominent role that an Insolvency Professional (IP) plays in insolvency resolution process. Some of the extracts are as follows:

### 1. **Role and Responsibilities of IP as described by Bankruptcy Law Reforms Committee in its Report, November 2015**

The Bankruptcy Law Reforms Committee (BLRC) in its Report has stated that *“The Insolvency Professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process... In administering the resolution outcomes, the role of the IP encompasses a wide range of functions, which include adhering to the procedure of the law, as well as accounting and finance-related functions. The latter include the identification of the assets and liabilities of the defaulting debtor, its management during the insolvency proceedings if it is an enterprise, preparation of the resolution proposal, implementation of the solution for individual resolution, the construction, negotiation, and mediation of deals as well as distribution of the realization proceeds under bankruptcy resolution. In performing these tasks, an IP acts as an agent of the adjudicator. In a way the adjudicator depends on the specialized skills and expertise of the IPs to carry out these tasks in an efficient and professional manner....”* It further states: *“The IP makes sure that assets are not stolen from the company and initiates a careful check of the transactions of the company for the last two years, to look for illegal diversion of assets. Such diversion of assets would induce criminal charges... These IPs will be delegated the task of monitoring and managing matters of business by the Adjudicator so*

*that both creditors and the debtor can take comfort that economic value is not eroded by actions taken by the other.”*

**2. Role of Insolvency Representative as described in UNCITRAL Legislative Guide on Insolvency Law**

In the UNCITRAL Legislative Guide on Insolvency Law, the importance of Insolvency Representative has been spelt out as: *“The insolvency representative plays a central role in the effective and efficient implementation of insolvency law, with certain powers over debtors and their assets and a duty to protect those assets and their value, as well as the interests of creditors and employees, and to ensure that the law is applied effectively and impartially. Accordingly, it is essential that the insolvency representative be appropriately qualified and possess the knowledge, experience, and personal qualities that will ensure not only the effective and efficient conduct of the proceedings but also that there is confidence in the insolvency regime.”*

**3. The role of a liquidator as the administrator in effective implementation of the law as described by the International Monetary Fund**

The International Monetary Fund has also held the importance of the role of a liquidator as the administrator and in ensuring effective implementation of Law. It has added that *“As court-appointed officials, they have an obligation to ensure that the law is applied effectively and impartially. Moreover, since they normally have the most information regarding the circumstances of the debtor, they are in the best position to make informed decisions.”*

**4. Role and Responsibilities of an Insolvency Professional as explained by the Former Chairperson of IBBI**

Dr. M. S. Sahoo, Former Chairperson of Insolvency and Bankruptcy Board of India (IBBI) also echoed the views and explained the role and responsibilities of IP. He stated that *“The insolvency profession is in its infancy. It is a stage in which reputation is formed. Once society forms a perception about a profession, it is very difficult to change it. It is, therefore, incumbent upon the IPs to build and safeguard the reputation of the profession which should enjoy the trust of society*

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*and inspire the confidence of all the stakeholders. They must justify the exalted status of an institution bestowed on them under the Code.”*

### **Key Role and Responsibilities of RP as provided in the Code and CIRP Regulations thereunder**

Essentially, the RP is tasked with facilitating the entire resolution process while attempting to address and balance the interests of all stakeholders. In this regard, Section 23 of the Code requires that:

- ✓ Section 23(1): Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period
- ✓ Section 23(2): The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional

**As IRP / RP, a whole array of statutory and legal duties/powers is vested with him. Some of which are described below:**

- He collects information relating to assets, finances, and operations of CD.
- He manages the affairs of CD, exercises the powers of its Board of Directors, and complies with applicable laws on behalf of CD.
- He is entrusted to protect and preserve the value of assets of CD, manage its operations as a going concern and facilitate the Committee of Creditors (CoC) in taking prudent decisions for the resolution of insolvency.
- He constitutes CoC, provides financial information to CoC as required by them, conducts meetings of CoC till passing of Resolution Plan as provided in Explanation to CIRP Regulation 18(2), acts on the advice of Committee of Creditors and takes prior Approval of CoC on certain matters.
- For efficient conduct of the process, IP is entrusted to perform other key activities including making the public announcement as per section 15 of the Code read with CIRP Reg 6 in Form A, verification of claims, preparation of information memorandum, raising interim finance,

## **Role and Responsibilities of RP as CEO of the Enterprise**

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appointment of registered valuers, inviting prospective resolution applicants to put forth their resolution plan, etc.

- In fact, as per recently amended CIRP Regulations 36, additional disclosures are now required to be made in preparation for the Information Memorandum. Further timeline for invitation for EOI as per CIRP regulation 36A has also been reduced to 60<sup>th</sup> day from the existing 75<sup>th</sup> day from the insolvency commencement date.
- The Code empowers him to appoint professionals, seek cooperation from personnel of CD, and seek orders from the AA in case of any preferential, undervalued, extortionate, or fraudulent transaction (PUEF).
- During a CIRP, an IP may also be appointed as an Authorized Representative (AR) for any class of creditors.
- As per the newly introduced CIRP regulation 35A (3A) he is required to inform Prospective Resolution Applicant (PRA) also about applications filed against PUEF transactions.
- He examines Resolution Plan and presents a compliant plan to CoC for its approval. He then submits approved Resolution Plan to AA. If no Resolution Plan is received then as per newly introduced CIRP regulation, he may sell the assets of the CD in part also with the approval of CoC along with adhering to the new procedure as prescribed in new CIRP Regulation 37(m).
- As per section 17(2)(e) of the Code, the RP is responsible for complying with the requirements under any law for the time being in force on behalf of the CD. It is pertinent to note that RP is required to take care of various statutory compliances like under Income Tax laws, GST laws, SEBI Regulations if applicable, industry specific regulations, Labour laws etc.
- RP is now required along with CoC as per new CIRP regulation 39BA to examine and explore compromise or arrangement and accordingly inform AA while filing a Liquidation application under section 33 and also keep exploring during the pendency of such application with AA.
- Additional responsibilities have been cast on RP at the time of filling Liquidation application to AA as per newly introduced CIRP Regulation 40D (Sub Regulation (1) & (2)) that he has to record and submit the

## **HB on Enterprise Management of Corporate Debtor by Resolution Professional**

consideration of CoC regarding non-operational status for the preceding three years, goods produced or service offered or technology employed being obsolete, absence of any assets, lack of any intangible assets or factors which bring value as a going concern over and above the physical assets like brand value, intellectual property, accumulated losses, depreciation, investments that are yet to mature.

**Some of the factors related to managing the enterprise by RP are given below:**

- **Support from Erstwhile Management and other stakeholders**
  - The Code provides for the suspension of powers of the Board of Directors and vests such authority in the RP. So, one of the primary legal duties of the RP is to assume the powers vested in the board of directors and manage the operations of the corporate debtor (CD) as a going concern. While the responsibility for the management of affairs of the CD as a going concern vests in the RP, the duties of the management, employees, and workmen of the company and their day-to-day functions are not extinguished.
  - Thus, the RP has to fulfil his statutory duty to the CD and the Code with the support of the promoters, personnel of the CD or any other person associated with the management, while retaining overall responsibility for key decisions.
  - As per CIRP Regulations 4(2), the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall provide the information within such time and in such format as sought by the interim resolution professional or the resolution professional, as the case may be.
  - The ongoing nature of operations does not afford much time and it is crucial for the RP to rapidly surmount the steep learning curve. At this stage, the support from the erstwhile management and employees becomes essential for RP.
  - The stakeholders as mentioned above play a key role in highlighting risk factors and peculiarities associated with the operations and functioning of the CD, enabling the RP to plan for and implement strategies to overcome such potential risks.

## **Role and Responsibilities of RP as CEO of the Enterprise**

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- The approach of consultation, in addition to placing on record the challenges being faced by him, would also enable the RP to gain guidance from the members and other participants who would have a much longer relationship with the CD and may be aware of certain challenges which may have also been faced in the past. The RP may pro-actively seek support from all participants at the meetings of the CoC.
- Further, the RP requires on ground support from the personnel of CD in meeting various statutory compliances.
- The Code, through Section 19, enables the RP to seek assistance from any person associated with the CD. In case such assistance is not received, the provision authorizes the RP to make an application to the AA seeking directions to such person from whom assistance is required.
- To garner support from the personnel of CD, the RP may utilise a fine mix of interpersonal relationship skills. Particularly, the attribute of sensitivity is important while engaging with the personnel.
- **Utility of relevant data in CIRP**
- The key duties of the RP with respect to the conduct of the corporate insolvency resolution process (CIRP) include verification of claims, preparation of the Information Memorandum (IM), the conduct of the valuation, and facilitate due diligence by potential resolution applicants.
- For verification of claims, the RP would require updated books of account, along with support from the teams of the CD for the resolution of queries that he may have.
- The preparation of the IM, the conduct of valuation by registered valuers, and due diligence by potential resolution applicants are data-based activities. The quality of data determines the quality of the diligence, which, in turn, has a direct impact on the outcome of the resolution process.
- In absence of relevant data, capturing the correct financials and statements of assets and liabilities in the IM may become difficult, which is a key input to make the resolution plan for the CD.

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- The registered valuer is required to determine the liquidation value and fair market value of the CD. Both these values would depend upon data regarding the assets and the operations of the CD. The collation of this data would require active support from the employees of the CD.
- The resolution applicants usually have a multitude of queries regarding the operations of the CD. The long-serving directors and employees of the company would be better placed to answer such queries. Their support would help RP towards maximisation of value. The ability of the RP to enable the resolution applicants to submit the best possible resolution plan is dependent at the support extended.
- Each of these activities has a significant dependency on data provision, requiring active assistance by the officers and employees of the CD.
- **Balancing Interests of Stakeholders**
  - As IRP / RP, he is tasked with conducting and facilitating the CIRP while attempting to address and balance the interests of all stakeholders. For example, in cases, where the operational cash flows are not sufficient to meet operating expenses, the RP may prioritize expenditure of the CD, keeping in mind the interests of the stakeholders.
- **Enforcement of Moratorium**
  - As per section 14 of the Code, a moratorium is declared by the Adjudicating Authority (AA), on the insolvency commencement date, prohibiting any new suit, or continuation of the existing suit, against the CD. This provision enables the cessation of ongoing matters against the CD. Despite the moratorium, if new proceedings and suits are initiated against the CD, Representations are required to be made for the imposition of the moratorium in such matter.
- **Post-Completion of CIRP**
  - Even after the completion of the CIRP process and handover of the CD to the successful resolution applicant, there are various stakeholders with respect to the CD who make certain applications at different fora for grievances.

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### **Role and Responsibilities of RP as CEO of the Enterprise**

- The applications may vary and may seek redressal on issues related to the CIRP process. Being made a defendant in such matters post-CIRP, the RP is required to continue to act.
- It may also be noted that the Code provides specific forums and limitations of time for filing any grievances.
- In this regard, the RP may ensure that the resolution plan addresses all claims, disputes, and litigation, to limit the level of such post-CIRP litigation. He may choose to remain in active dialogue with the successful resolution applicant to follow through on such litigation.

### **Key Role and Responsibilities of IP as provided in the Code and Liquidation Process Regulations thereunder**

The Code and Liquidation Process Regulations thereunder also highlight the key Role and Responsibilities of the IP as liquidator.

- The liquidator is required to explore the sale of CD as a going concern as per Liquidation Process Regulation 32 (e).
- During a liquidation process, an IP acts as a liquidator and has three broad responsibilities of claim adjudication, sale of business/assets and distribution of liquidation proceeds. For performing these functions, a liquidator is entrusted to make public announcements inviting claims, verify claims, take into his custody or control the assets of CD, form a liquidation estate, and endeavour to sell the assets of the liquidation estate through a public auction, in consultation with the Stakeholders' Consultation Committee. Now by the introduction of the new Liquidation Process Regulation 12(2)(c) claim submitted during CIRP has to be considered if no claim is submitted during Liquidation within 30 days as per Proviso to Liquidation Process Regulation 30.
- For efficient reporting, a liquidator is required to maintain registers and books of account of CD, prepare reports and submit them before AA. Further, as per new Liquidation Process Regulation 45A, record shall be preserved in Electronic Form minimum for 8 years and in physical form for minimum 3 years. However, when sold as a Going concern, all general records would be handed over to the successful buyer. All records are to be preserved at a secure place and produced as required under the Code.

### **HB on Enterprise Management of Corporate Debtor by Resolution Professional**

- The liquidator also seeks orders from the AA in case of any preferential, undervalued, extortionate, or fraudulent transaction.
- Upon realization of liquidation estate, he distributes the sale proceeds among the stakeholders as per the waterfall mechanism.
- On completion of the liquidation process, he submits an application with the final report to AA for closure of the liquidation process and dissolution of the CD.

## Chapter 4

# Challenges Faced by RP in managing the Enterprise as a Going Concern

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The Code emphasizes that the IRP / RP shall manage the operations of the corporate debtor as a '**Going Concern**' i.e. resolve the insolvency of corporate debtor for revival and prevent it from going into liquidation.

### **What are the challenges?**

**There are several challenges faced by an Insolvency Professional (IP) in managing the enterprise as a going concern, which may include:**

- **Understanding the reason for the failure of the entity**

There may be various reasons for the failure of the entity, such as *Financial Failure, Business Failure etc.*, and the analysis to understand the reason for failure is important and it may take considerable time.

- **Diverse objectives of various stakeholders**

The stakeholders include creditors, debtors, employees, workmen, Government and statutory authorities, in addition to the consumers of the entity. All these stakeholders would have diverse objectives and expectations from the process. For example, in a real estate project, the lenders would expect the haircut to be minimal whereas the homebuyers would expect to get their flats as early as possible.

- **Non-cooperation from certain stakeholders**

There may be very little or no cooperation from certain stakeholders like promoters, suspended Board of Directors, and the employees. Getting information without assistance from these persons may not be possible and it may be time consuming, though time is the essence of the CIRP.

- **Compliance issues pending on the part of the corporate debtor**

The corporate debtor may or may not be compliant with various laws applicable to it before CIRP. The RP may face a challenge in getting the compliances cleared for the period preceding the CIRP. Moreover, there may

## **HB on Enterprise Management of Corporate Debtor by Resolution Professional**

be some old pending compliances or legal issues, which may come up during the CIRP and this the RP may have to look into.

- **Lack of information / incomplete information**

There may be some information, which may not have been made known to the RP at the time of initiation of the process. It would be a challenge to evaluate such information and to get the details at the earliest.

- **Disputes / Issues relating to claims of creditors**

There may be a case involving claims and the verification of some of the claims may take longer than expected time. In case of rejection of whole or part of the claim of some creditor, there may be a risk of litigation being initiated against the RP. Moreover, the CoC may have to be reconstituted based on the progress of the claim verification process and there could be cases of delayed claims too.

- **Timely decision making**

If the decision in the CoC meetings is delayed or confirmed late the overall process may be delayed and the timelines may be affected.

- **Related Party Issues**

Identification of related parties and the treatment of their claims is to be carefully looked into by RP.

- **Existing and fresh litigations by creditors or other stakeholders**

One of the major challenge for an RP would be to manage and handle the litigations - ongoing as well as fresh cases being filed by the aggrieved stakeholders. It requires time, money and efforts in engaging legal counsels and professionals and it also involves court time.

- **Delayed or no contribution towards CIRP costs and Raising of Interim Finance**

It is challenging for the RP to continue to run the entity as a going concern if he does not receive contributions towards CIRP costs in time. In case of inadequate funds, interim finance may have to be raised, subject to the resolution and due approval of the CoC.

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## Challenges Faced by RP in managing the Enterprise as a Going Concern

- **Frivolous Complaints against the RP**

Perhaps the big challenge for an RP is defending himself in the frivolous complaints filed with various Authorities. The IBC prescribes strict timelines which the RP has to adhere to and with such complaints filed, the process may be affected as it involves time, efforts and money and acts as an impediment to the free flow of the process.

### **How to overcome these challenges?**

**There could be various ways to overcome the challenges faced, which could be based on the specific enterprise and specific to situation, etc. Some of the ways to overcome these challenges are mentioned hereunder:**

- Proper control over the office(s) and site(s) of the corporate debtor should be ensured by the RP and all the records kept therein should be properly kept.
- Right from the inception of the process, the RP needs to ensure effective communication with all the stakeholders, in addition to the Committee of Creditors (CoC) as and when constituted. There should be proper communication with proper records and trails being created of the communication exchanged with other parties.
- RP may aim for proper balancing of interests of all the stakeholders.
- An in depth and comprehensive analysis of the corporate debtor including financials, statutory registers and other records may be made, to ascertain the probable causes of the insolvency and non-compliances, if any.
- The core duties should be performed by the RP himself, but he can take help of professional services by appointing accountants, legal or other professionals as may be necessary. However, no duty should be outsourced to any person / professional. Independent professionals for valuation and transaction audit should be appointed and the professionals should be given all the requisite information at the earliest and clear dates should be given by which the reports are expected to be issued by the professionals. There should be a proper follow up to ensure that the date committed for the issue of the report is met.

## **HB on Enterprise Management of Corporate Debtor by Resolution Professional**

- The CoC may be explained about the importance of timely decision making from their side, including the CIRP cost contributions, based on the budget approved by it. The issue relating to raising of Interim Finance may be adequately discussed and deliberated upon before the CoC and their views may be taken, before putting up the matter for voting. All significant developments may be communicated to the CoC at the earliest, without waiting for the next CoC meeting.
- In addition to the public announcement, all the statutory authorities to which the corporate debtor is affiliated to or has dealings are to be intimated about the initiation of the process and the consequent moratorium imposed.
- The Banks should be intimated about the initiation of the process and all necessary documents should be served upon them. RP should take all the bank accounts under his control.
- All the claims received by the RP are to be minutely analysed and verified as soon as possible. In case there is some additional information or records required from the claimant, it could be explained.
- Proper compliances should be done on a timely basis with respect to IBBI, Insolvency Professional Agency (IPA) (*with which the RP is registered*) and other statutory authorities, as applicable. All the timelines should be closely monitored by the RP and all possible efforts should be taken to ensure that the timelines are met.
- Where technical expertise is required to run the affairs of the entity, competent professionals may be appointed to assist the RP with properly defined duties and functions which the professional will be expected to perform.
- An opinion should be formed on whether there seem to be any preferential, undervalued, fraudulent or extortionate transactions with respect to the corporate debtor and if so, proper determination should be made of such transactions, followed by necessary application being filed with the Adjudicating Authority.
- The erstwhile management is to be explained about their obligation to cooperate with the IRP / RP and in case of non-cooperation, an application may be filed with the Adjudicating Authority under Section

### **Challenges Faced by RP in managing the Enterprise as a Going Concern**

19 (2) of the Code. A suitable decision may be taken with respect to the continuation of the services of the employees and workmen of the corporate debtor. The employees and the workmen may be updated about the developments.

- Proper records and accounting of each and every amount expended in the process should be maintained along with all supporting documents and vouchers.
- Professionalism is of utmost importance in the entire resolution process. The RP needs to be constantly updated about the latest developments with respect to the Code. Also, he needs to be aware about various Judicial Pronouncements made by Supreme Court, High Courts, NCLAT and NCLT on issues under IBC which are important repository to understand the question of law and the underlying principles.

## Chapter 5

# Case Study

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### 1. Handling of CIRP of Corporate Debtor involved in Real Estate activities

The corporate debtor is involved in real estate activities and development of residential and commercial projects.

At the time of initiation of CIRP, the project had been stuck up for more than 26 months and the interests of more than 300 home buyers of a particular Phase were involved. There were overall claims of more than Rs.1200 crores.

There were complex issues in the CIRP including some special arrangements between the consumers and the corporate debtor wherein some consumers had entered into a 'Buy Back' arrangement in which the flat was to be bought back by the entity and the consumer was supposed to get the money back with interest at a pre-agreed rate. There were also some cases in which consumers had just paid a token amount to show their interest in the project, in the name of 'Expression of Interest'. Whether such cases were to be considered in the homebuyers' category was an important question to be addressed.

Adequate funds were not available and the RP found it difficult to pay even the security charges and other basic expenses and it was a challenging task for the RP to manage the operations in such a situation.

There was a deadline of August 15, 2022 for payment of External Development Charges (EDC) Dues by the corporate debtor of around 36 crores, failing which the amount would have been around 62 crores. The RP discussed and explained this issue to the CoC members, and requested them for a timely decision making.

There were 14 cases of Expression of Interest by Prospective Resolution Applicants, of which 4 resolution plans were received by the RP.

Out of 4 resolution plans, 3 plans compliant with the Code were put up for voting by the CoC and finally, the resolution plan of one resolution applicant got approved by the CoC on August 12, 2022 with a voting share of 78.56% and the dues were cleared before August 15, 2022.

There were some frivolous applications and complaints filed which had to be replied to by the RP, involving considerable time and efforts.

Despite all the challenges, the CIRP was completed in a time period of 7 months and 2 days (212 days), which is significant considering the debt of more than Rs 1200 crores.

The application for approval of the resolution plan was filed subsequently and the matter is pending for consideration before the Hon'ble NCLT.

## **2. Project-wise/ Piecemeal Resolution Leading to Hybrid situation of resolution and liquidation**

When IBC was introduced, it was envisaged that when a Corporate Debtor (CD) is subjected to CIRP, it will result in successful resolution plan or in the absence of any resolution plan / non approval of resolution plan the CD has to face liquidation. Accordingly, insolvency process commenced for various CDs which resulted in successful resolution or liquidation.

However, in respect of large real estate companies where multiple projects were going on at one time, a question was raised as to whether the RP can invite separate resolution plans for its various projects. This question has arisen in respect of one of the large real estate company. In this case, the RP invited resolution plans for CD in normal course of business, however due to complexities of various projects where profitability of some projects was uncertain, the RP was not able to get any resolution plan as such RP had no other choice than to apply for the liquidation. However, at the same time, several home buyers of different projects demanded to consider project wise / piecemeal resolution. On close look at IBC, it was noticed that IBC envisage invitation of "Resolution Plan" but do not prohibit RP inviting multiple plans for multiple business segments. As such, based on legal advice, RP had divided businesses of the CD into 8 verticals and invited expression of interests. In response thereto 15 parties had shown their interest, and RP continued the CIRP. In the meantime, due to litigation, the process was stalled and CIRP period was over and NCLT did not accept to extend the period of CIRP, as such RP was compelled to file liquidation application.

Aggrieved by the refusal of NCLT in granting extension of time, home buyers association appealed before NCLAT, when NCLAT admitted the appeal and granted 90 days time to RP to restart process and complete project wise resolution of 8 verticals. Accordingly, RP completed entire process for

## **HB on Enterprise Management of Corporate Debtor by Resolution Professional**

inviting resolution plans for 10 verticals. In response RP had received 15 resolution plans and 8 plans were put up for voting for 6 verticals.

It can be seen that out of 10 verticals, only 6 verticals were put up for voting and balance 4 verticals will automatically go for liquidation. This has resulted in hybrid situation of part of CD getting resolution plans and part going in liquidation.

The challenge in this situation could be related to stamp duty and taxation. In typical resolution plans, when CD is transferred from erstwhile promoters to new promoters by extinguishing (or reduction) of share capital and allotment of new shares, it does not involve stamp duty or taxation as there is no transfer of assets in this case. However, in piecemeal resolution, the specific vertical is to be demerged from corporate entity and to be transferred to the resolution applicant which may attract stamp duty on transfer of assets. Besides, as the assets are transferred from the corporate entity (CD), it may attract provisions of Income Tax Act, 1961. These aspects are yet to be examined in this case.

Further, in respect of piecemeal resolution, problem may come up when the RP invites resolution plans for various verticals, and if one of the vertical is the CD as Corporate Entity, and RP is able to get successful resolution plan for the corporate entity whilst no resolution plans are received for some of the verticals, in that situation, the vertical with corporate entity will pass on to resolution applicant but other assets will be subject to liquidation.

Further in the event of liquidation, the liquidator may explore the possibility of Scheme of Arrangement for balance assets of the CD as a whole or may invite Scheme for Project(s).

### **3. Handling of CIRP of Manufacturing company**

Handling of CIRP of manufacturing company is a challenge for insolvency professional. For handling such unit, IRP/RP acts as a CEO of the company and looks after various departments of the company. It goes without saying that when the company is under CIRP it is already cash starved and unable to generate profits. At this stage, when RP takes charge, it is his managerial capability and business acumen that may help in resolving the issues.

Similar challenge came up for the Insolvency Professional in case of one of the well established listed company in the business of manufacturing and distribution of edible oil and packaged food. The company was established

for quite some time, but incurred huge losses due to excessive trading in oil and oilseed market. As a result, the company could not withstand stiff competition in market and ultimately the production suffered leading to virtual closure of production activities.

When the IRP took charge, production was almost at negligible level and erstwhile management had entered into an agreement for operating the plant on job work basis. The product line of the company needed sufficient cashflow to purchase the raw materials, process and pack in consumer packs and distribute in market whereas the liquidity of the Company was at the lowest level. As such after completing necessary formalities, IRP decided to concentrate on the operations of the company and gave a try to run the plant on job work basis. Due to good brand image, it was possible to launch the product in market with external help who were ready to run the plant on job work basis. The RP therefore decided to operate the plant on job work basis. The terms of running the plant were renegotiated with assurance of continued production and supply. With encouragement from RP, the external party was ready to continue the job work arrangement which was thereafter approved by CoC.

The first thing that the IRP was required to do is to repose confidence that he is in the position to run the plant and able to give required quantity of production. Assurance was also given that the product will have the quality and sales can continue in the company's brand which has good market value. This arrangement worked very well and the RP was able to maintain production and packing to almost 90-95 percent level. The operating costs were recovered and surplus was generated. With the generation of sufficient cash flow, RP was able to pay full salaries and other operating expenses and surplus was converted into Fixed Deposits.

It is worthwhile to note that the CD, which was unable to generate positive surplus in pre CIRP period, was able to generate funds and surplus was converted into Fixed Deposits by RP. For maintaining full production and maintaining quality, RP decided to pay all current suppliers and workers on time and to maintain the business tradition, ensured that past practice of distribution of sweets to workers and staff is maintained. This had gained substantial confidence amongst the stakeholders making the plant operations simpler to RP.

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In due course, RP issued necessary advertisement inviting expressions of interest, which received good response. One of the resolution applicant submitted bid above the liquidation value but the resolution plan was not approved.

The resolution applicant had further increased the bid. The Hon'ble NCLT had directed RP to hold CoC meetings and renegotiate and reconsider the proposal of Resolution Applicant. But the resolution plan again was not approved and RP could get about 60% votes in favour of resolution plan against requisite majority of 66%. As a result, liquidation was ordered.

Incidentally, two years down the line, the Liquidator sold the company on going concern basis.

### **4. Handling of CIRP of big Real Estate Company**

The Corporate Debtor was having total debt of Rs 13,120 Crores against an application filed u/s 7 by a Home Buyer. The CD was in big financial crisis. IRP put efforts to get finance to keep alive projects under construction at various places. There were immediate requirements of Rs 400-500 crores to keep running these Projects. If under constructed projects get stopped than there is huge erosion in asset value. The Banks who had done most of the existing funding were not willing to provide further working capital after starting of CIRP. The promoters also became reluctant to infuse funds due to CIRP. However, IRP was able to arrange through another Bank, who based on guarantees given by Promoters provided CD of Rs 400 Crores at marginally higher rate of interest. Perhaps it is one of the highest funding for a CD under CIRP. Later on with the order of Hon'ble Supreme Court, the CIRP ended after settlement with Home Buyer.

## Chapter 6

# Professional Opportunities during Enterprise Management under IBC

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The Insolvency and Bankruptcy Code has opened various new opportunities for professionals. Some of the opportunities are mentioned below:

1. **As Registered Valuer:** As per the IBC, IRP needs to appoint two registered valuers (RVs) to determine the fair value and liquidation value. In some cases, RVs are also appointed during liquidation process to determine the realisable value of the assets or businesses under clauses (a) to (f) of Liquidation Process Regulation 32 of the corporate debtor.
2. **Preparation of Resolution Plan:** Multiple resolution plans can be submitted to IP by interested parties who are called resolution applicants. Professionals can assist resolution applicants in the preparation of the Resolution plan as they may need professional help.
3. **Transaction Review Audit:** The RP has to form an opinion on preferential and other transactions (Sec- 43, Sec-45, Sec- 50 and Sec-66 under IBC) and accordingly has to file to Adjudicating Authority for avoidance of transactions. It might be needed to conduct a Transaction Review Audit on these matters wherein Chartered Accountants can provide services.
4. **Due Diligence:** CIRP Regulation 36A (8) under IBC provides that a RP has to conduct due diligence to satisfy that prospective resolution applicant complies with provisions of Sec 25(2)(h) and Section 29A. In this regard, RP may take help of professionals.
5. **As Support Service popularly known as Process Advisor:** - The service as Process Advisor by experts may be provided to IPs in the execution of their assignments, wherein they might require assistance in practical aspects of handling assignments.
6. **Data processing:** As per the Code, IRP/RP is needed to collate and verify the claims of the creditors. In a large operating company, data could be huge and the IRP/RP may avail services of professional to

## HB on Enterprise Management of Corporate Debtor by Resolution Professional

assist him. (though the responsibility lies with the Resolution Professional with regard to the Claims admission and reporting to the CoC and AA).

7. **Management of Corporate Debtor:** IRP/RP is required to manage the business of Corporate Debtor on a going-concern basis. IRP/RP may engage Chartered Accountant and other professionals for assistance in management e.g. as CFO.
8. **Secretarial and legal work:** CIRP process requires substantial amount of bookkeeping, holding meetings, recording minutes, communication with NCLT, etc. IPs may take the help of professionals in this regard.
9. **Direct and Indirect Tax Expert:** An expert in the field of Direct and Indirect taxation could be required during the insolvency resolution process.
10. **Representing lenders:** Any creditor who is part of CoC is allowed to appoint another IP (other than RP) as their representative in CoC.
11. **Representing before NCLT / NCLAT:** A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorize one or more Chartered Accountants to present his case before the Tribunal or the Appellate Tribunal.
12. **Industry Expert:** An IP especially in medium-sized or large assignment may require Industry Expert to understand the operations and trade better.
13. **Stock Audit:** It may be necessary to conduct periodic Stock audits of the CD during the CIRP process wherein Chartered Accountants can provide their service.
14. **Internal Audit:** RP may appoint Internal Auditors during the business under CIRP wherein Chartered Accountants can provide their service.
15. **Providing Interim Finance:** RP may require professional advice in availing Interim Finance since the Code provides that the amount of interim finance has first priority in payment under the waterfall mechanism.

### **Professional Opportunities during Enterprise Management under IBC**

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- 16. Cross-border opportunities:** The framework related to Cross Border insolvency under IBC is expected to be brought out which will also provide a good professional opportunity in days to come.

