



# OPPORTUNITIES FOR PROFESSIONALS UNDER INSOLVENCY AND BANKRUPTCY LAW

# Opportunities

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## AAA Capital Services Private Limited

(India's largest 'Resolution & Enforcement Agents' under SARFAESI Act; empanelled and working for all the banks in India; having operations spread over 19 states; handled more than 14,000 Sarfaesi cases with more than 160 human resources)

[www.aaacapitalservices.com](http://www.aaacapitalservices.com)

## AAA Insolvency Professionals LLP

(India's second 'Insolvency Professional Entity' recognised by IBBI)

Branch offices:

Mumbai | Kolkata | Ahmedabad | Chennai | Kochi | Raipur |  
Bengaluru | Hyderabad

[www.insolvencyandbankruptcy.in](http://www.insolvencyandbankruptcy.in)

# OBJECTIVES OF IBC

- An effort to improve ease of doing business in India
- Promote Entrepreneurship
- Improve Availability of Credit at low mark-up.
- Balance the interest of all stakeholders
- Maximisation of the value of assets of persons under financial stress either by resolution or by Liquidation or Bankruptcy under a fixed timeline.



# What is expected out of an Insolvency Professional

- i. An IP must maintain integrity by being honest, straightforward and forthright in all professional relationship**
- ii. Should have good communication skills.**
- iii. He must maintain complete independence without external influence.**
- iv. Reasonable care and diligence is expected while doing the process**
- v. The role is challenging but rewarding also**
- vi. Should be good at running businesses**
- vii. Skill to construing and negotiating deals**
- viii. Investigating into affairs of Corporate Debtor to find diversions, frauds, objectionable transactions**
- ix. Understand viability of business, sustainable debt, etc.**



# QUALIFICATIONS AND EXPERIENCE REQUIREMENT FOR INSOLVENCY PROFESSIONAL

**1. 10 Years Post Qualification experience for CA, CS, Cost Accountant, Advocate from the date of membership or from the date of membership of Bar Council**

**OR**

**2. 15 years management experience after any bachelor's Degree**

**3. Passing Limited Insolvency Examination within 12 months before the date of his application for enrolment**

**4. Completion of 50 hours Pre-registration Course conducted by IPAs**

**5. Should not be in employment at the time of making application for enrolment**

**6. Should have a minimum CIBIL Score of 650**

**7. An Insolvency Professional can also continue his profession**



**QUALIFICATIONS**

INSOLVENCY

# In Future

## Graduate Insolvency Program (GIP)

To be launched in next 6 months – would be available to young bright students – a 27-month course after completion of Professional courses – a mix of class room study and practical experience (including 3 months of international experience as well) – age limit at the time of joining is likely to be 28 years.

## National Insolvency Program (NIP)

To be launched later – would be available to young bright students after 12th standard – may be five-year course – details are not available yet



Opportunities



Opportunities

***OPPORTUNITIES  
FOR***

***INSOLVENCY PROFESSIONAL  
REGISTERED WITH IBBI***

- A. Interim Resolution Professionals** - (for initial appointment up to 40 days during CIRP)
- B. Resolution Professionals** - (for CIRP period of 180 days or extended up to 270 days)
- C. Liquidator** - (the assignment may be for two years or till the sale of all assets)
- D. Representative of a creditor in Committee of Creditors** - {Under Sec. 21(6)(c)}
- E. Representative of a class of creditors** - {Under Sec. 21(6A)(b)}
- F. Voluntary Liquidator** - (For Voluntary Liquidation of Corporate Persons under Chapter V of the Code)
- G. Resolution Professional for Individuals, Partnership & Proprietorship Firms** - (for Insolvency resolution Process for Individuals, Proprietorship Concerns and Partnership concerns)
- H. Bankruptcy Trustee** - (For bankruptcy Process of Individuals, Proprietorship Concerns & Partnership Firms - Just like Liquidator for Corporates)
- I. Promote an Insolvency Professional Entity**



- A. Resolution Professional for PPIRP (consultancy Role with the CD)**
- B. Resolution Professional for PPIRP (Pre-appointment Role)**
- C. Resolution Professional for PPIRP (Post appointment Role of RP)**
- D. Preparation of resolution plans and handholding any takeover process**





# A. Interim Resolution Professional

(for an initial period of CIRP up to 40 days)

- Take over control and custody of the Corporate Debtor as a going concern
- To understand financial position of Corporate Debtor including fund flow and asset – liability mis-match.
- To understand the formation, objective, sustenance, reasons for default of Corporate Debtor
- Takeover control and operations of all the bank accounts of Corporate Debtor
- Public announcement of CIRP and inviting claims
- Receiving, collating, verification of claims from secured or unsecured financial creditors, operations creditors, government dues, workers, employees and other stakeholders.
- Constitution of Committee of Creditors
- Appoint representatives of class of creditors, if required
- Preparation of reports for submission to National Company Law Tribunal
- Convening of meetings of Committee of Creditors

# B. Resolution Professional

(up to 180<sup>th</sup> day of CIRP or up to 270<sup>th</sup> day, if extended or up to the date of handing over to resolution applicant or up to the date of liquidation order)

- To continue the operations of the Corporate Debtor as a going concern and manage the entire business including fund flow, accounting, assessments, litigations, etc.
- Preparation of Information Memorandum
- Getting the valuation of assets done from registered valuers
- Convening and chairing Committee of Creditors meetings for various approvals, appraisals and directions
- Preparation of Bid Evaluation Matrix, Request for Resolution Plan (RFRP)
- Invite Expression of Interest and developing resolution applicants for submission of resolution plans
- Appoint transaction auditors or forensic auditors for identification of transactions u/s 43, 45, 50 & 66 of IBC
- Examination of all the resolution plans, verification of eligibility criteria, eligibility u/s 29A and presentation before COC
- To comply with all the statutory compliances including stock exchanges, SEBI, RBI, direct and indirect taxes, labour laws, etc.

# C. Liquidator

(from the date of liquidation order till the assets are disposed off or recovered and proceeds are distributed to stakeholders – expected to be completed in 2 years)

- To continue the operations in case it helps faster or higher recovery
- To make a public announcement for inviting claims
- To receive, collate, verify and admit claims of all the stakeholders i.e. secured or unsecured creditors, operational creditors, statutory liabilities, workmen, employees or other stakeholders.
- To complete all the books of account, operate the bank account of the Corporate Debtor
- To get the valuation of the assets from the registered valuers
- To prepare and submit various reports to NCLT i.e. Preliminary Report, Progress Report, Asset Memorandum, Asset Sale Report, etc.
- To prepare complete description of assets and all terms and conditions for e-auction of assets
- To sell fixed and current assets either on e-auction or physical auction or private treaty.
- To recover all debts of the Corporate Debtor i.e. sundry receivables, advances, refunds, claims, etc.
- To do all compliances as applicable during liquidation
- To do the closure process and file closure report after all the assets are sold or realised and proceeds are distributed to claimants

## **D. Representative of a Member of Committee of Creditors (Sec 21(6)(c))**

- **Member of COC can appoint an IP only as representative for attending the meetings**
- **The participant of meeting can either be an employee of member or a qualified IP (unless allowed by COC)**
- **Role is to understand the proceedings and protect the interest of member**
- **To prepare a report on the meeting and keep the member fully apprised**



## **E. Authorised Representative of a class of creditors {Sec 21(6A)(b)}**

- **To participate in the COC meetings and vote as per prior instructions from members**
- **To circulate the agenda, notices and minutes to all the creditors of that class**
- **To announce a voting window for taking voting from each creditor on each resolution.**
- **To protect the interest of that class of creditors to whom he is representing**

# F. Voluntary Liquidator

(For Voluntary Liquidation of Corporate Persons under Chapter V of the Code)

- To verify that no default is committed by the Corporate Debtor
- To complete all the documentations, approvals, resolutions, etc. for initiating the process of Voluntary Liquidation
- To liquidate all the assets by way of sale or realisation
- To distribute the sale proceeds to creditors
- Application to Adjudicating Authority for liquidating the Corporate Debtor

## **G. Resolution Professional for Individuals, Partnership & Proprietorship Firms (For insolvency resolution of Individuals, Proprietorship Concerns & Partnership firms) – to be notified yet only notified for guarantors to Corporate Debtor**

**May be notified in phases for following different categories: -**

- a) Personal Guarantors to Corporate Debtor**
- b) Partnership firms and proprietorship concerns**
- c) All other individuals**

- **Preparation and submission of application to initiate insolvency resolution process for a debtor who commits a default**
- **Preparation and submission of application to initiate insolvency resolution process for a creditor**
- **Appointment as Resolution Professional**
- **Preparation and submission of various reports, public announcements, etc.**
- **Verification & Registration of claims; preparation of list of creditors**
- **Convening and conducting of Committee of Creditors meetings**
- **Finding Undervalued, Preferential, Extortionate and fraudulent transactions and making an application to Adjudicating Authority for obtaining appropriate order.**
- **Preparation of Repayment Plan, its justification, etc.**
- **Implementation and supervision of resolution plan**

# H. Bankruptcy Trustee

(For bankruptcy Process of Individuals, Proprietorship Concerns & Partnership Firms - Just like Liquidator for Corporates)

- Preparation of application for Bankruptcy on behalf of a creditor or debtor himself
- Appointment as Bankruptcy Trustee for conducting the bankruptcy Process
- Take control and custody of Bankruptcy Estate of the debtor
- Invite claims from creditors, register the claims, list of creditors
- Summoning a meeting of creditors and conducting the meeting
- Realise the value of all items of Bankruptcy Estate by sale of assets or otherwise by way of realisation of debts and claims.
- Finding Undervalued, Preferential, Extortionate and fraudulent transactions and making an application to Adjudicating Authority for obtaining appropriate order.
- Divide and disburse the value realised to claimants /creditors
- Closure of Bankruptcy Process, preparation of closure report and apply for discharge order.



# I. Insolvency Professional Entity

- **Sole objective is to provide support services to Insolvency Professionals, who are its partners or directors**
- **IPE can be formed a Company, LLP or registered partnership firm**
- **Minimum Net Worth requirement is Rs. 1 Crore**
- **Majority of its shares or Capital Contribution is held by IPs who are its directors or partners**
- **Majority of its whole-time directors or designated partners are IPs**
- **One IP can become partner or director of one IPE only**



Opportunities



Opportunities

*OPPORTUNITIES FOR PROFESSIONALS  
OTHER THAN  
AN INSOLVENCY PROFESSIONAL*

# OPPORTUNITIES FOR PROFESSIONALS OTHER THAN INSOLVENCY PROFESSIONAL



- A. Support Services to Insolvency Professionals**
- B. Advisor to Corporate Debtors undergoing Corporate Insolvency Resolution Process**
- C. Consultations to Entities under Financial Stress (including options and threats under IBC)**
- D. Protection against 'Insolvency attacks' and recovery of business debtors and advances thru IBC**
- E. Advisor to Resolution Applicants for taking over Companies**
- F. Transactions Audit or Forensic Audits**
- G. Services of a Registered Valuer**
- H. Consultancy under SASHAKT SCHEME OF RBI (Circular dated 12/02/2018 and then June 2019)**

# A. SUPPORT SERVICES TO INSOLVENCY PROFESSIONALS

- **Preparation of Information Memorandum**
- **Preparing a report on business and financial operations of Corporate Debtor for the previous two years**
- **Claim Verification Process**
- **Evaluation of assets and liabilities as at the date of commencement of CIRP**
- **Examination of Resolution Plans submitted to Resolution Professional**
- **Internal audit during CIRP at the instance of RP with special focus on fund flow and leakage of funds during CIRP**
- **Stock audit during CIRP as RP is responsible for protection of assets while the business is being run by KMPs**
- **Statutory audits in case RP wants to change the auditor and COC approves it**
- **Audit of Income and Expenditure of Corporate Debtor during liquidation process**
- **All compliances of Corporate Debtor during CIRP for which RP will appoint professionals**

## B. ADVISOR TO CORPORATE DEBTORS UNDERGOING CORPORATE INSOLVENCY RESOLUTION PROCESS



- **Strategy for dealing with the Corporate Insolvency Resolution Process**
- **Compiling all the information required by Resolution Professional**
- **Preparation, submission and discussion on Resolution Plan, if Corporate Debtor is permitted to submit**
- **Advisor to Corporate Debtor for getting the forensic /transaction audit conducted**
- **Identifying and evaluating reasons for financial stress of the Corporate Debtor**
- **Arriving at sustainable debt of the Corporate Debtor and proposing a financial structure for revival**

## **C. CONSULTATIONS TO ENTITIES UNDER FINANCIAL STRESS (INCLUDING OPTIONS AND THREATS UNDER IBC)**

- A. Identifying and evaluating distressed companies for restructuring and rescue planning.**
- B. Developing the Strategies to mitigate Risks.**
- C. Working out a detailed bankable financial structure of the business.**
- D. Working out a detailed plan for restructuring the business from all angles.**
- E. Assessment of distressed assets, cash position, due diligence and turnaround feasibility.**
- F. Advice on the utilisation of resources to the optimum level.**
- G. Drafting insolvency petitions, if required or opting for restructuring under RBI circular dated 12/02/2018**
- H. Representation before the National Company Law Tribunal and National Company Law Appellate Tribunal for clients**
- I. Negotiating settlements with banks and other creditors**
- J. Advising for merger or acquisition or takeover.**
- K. Advisory services to management on an ongoing basis.**

# **D. PROTECTION AGAINST 'INSOLVENCY ATTACKS' AND RECOVERY OF DEBTS WITH IBC**

- **Identification of defaults by any person and protecting from 'Insolvency attacks'**
- **Change in documentation for a business entity to build in protection against 'Insolvency attacks'**
- **Training of human resources in Purchase, accounts and other departments regarding protecting the business from 'Insolvency attacks'**
- **Training and change in internal documents for recovery of debts thru IBC**
- **Options available under IBC for recovery of normal business debtors and advances**
- **Drafting of notices for defaulters**
- **Preparation of petitions for NCLT against operational creditors and financial creditors**
- **Representation before National Company Law Tribunal and National Company Law Appellate Tribunal for recovery of debts of your clients**

# E. ADVISOR TO RESOLUTION APPLICANTS FOR TAKING OVER COMPANIES

- Guiding clients for taking over companies under IBC
- Complete advisory services for strategy, preparation of documents, process and implementation for submission of Resolution Plan to take over a Corporate Debtor
- Preparation of Resolution Plan with sustainable debt and restructuring of debt and equity
- Arrangement of funds for taking over companies under IBC
- Consultancy for acquisition funding under IBC
- Representing the Resolution Applicant before RP and COC



# F. TRANSACTIONS AUDIT OR FORENSIC AUDITS

- Investigations, analysis and determination of transactions under section 43, 45, 50 and 66 of IBC
- Preferential Transactions (Sec. 43 & 44) – while CD has paid to one creditor and not to other having same priority under IBC
- Undervalued Transactions (Sec. 45, 46, 47, 48 & 49) – Gifts, transfer of assets at value significantly less than sale consideration taken by Corporate Debtor
- Extortionate Credit Transactions (Sec 50 & 51) – Receipt of financial or operational debt which requires exorbitant payments
- Fraudulent Transactions (Sec 49, 66, 67, 69) – all transactions with the intent of defrauding the creditors
- IBA registration is being preferred by PSBs
- Complete independence and a character and profile which is not influenced by external pressure is required

revenues  
MULTIPLES  
**VALUATION**  
assets calculation  
analysis ASSESSMENT  
WORTH forecast  
estimation APPRAISAL



**OPPORTUNITIES  
AS REGISTERED  
VALUER**

# G. SERVICES OF A REGISTERED VALUER

## THE COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017

(Amended up to 13/06/2018)

These rules are made by Central Government *in exercise of the powers conferred by section 247 read with sections 458, 459 and 469 of the Companies Act, 2013 (18 of 2013)*

## INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Authority under the Companies (Registered Valuers and Valuation) Rules, 2017)

1. ICAI Registered Valuers Organisation, New Delhi
2. ICSI Registered Valuers Organisation, New Delhi
3. ICMAI Registered Valuers Organisation, New Delhi
4. The Indian Institution of Valuers, Pune
5. Institution of Estate Managers and Appraisers, Kolkata
6. IOV Registered Valuers Foundation, New Delhi
7. PVAI Valuation Professional Organisation, Mumbai
8. CVSRTA Registered Valuers Association, Mumbai

# REGISTERED VALUERS

16 registered valuers under these provisions have been given certificate of registration by Shri P.P. Chaudhary, Minister of State for Law & Justice and Corporate Affairs on 16th July, 2018. Total registrations so far is 21 only.

No valuation services can be rendered under the Companies Act without the registration certificate from IBBI after 30th September 2018

The registered valuer may conduct the valuation services under other laws under these rules, however, the same is not mandatory unless notified by that other law.

IBBI is expected to notify for all valuation under IBC to be done by these registered valuers.

# Eligibility for becoming a registered Valuer

1. Registered with IBBI as valuer
2. Member of a Registered Valuers Organisation (RVO)
3. Has passed an examination as conducted by IBBI
4. Qualification Required (as per separate chart )
5. Resident Indian, not an undischarged insolvent, not a minor, not of unsound mind, not convicted, is a fit and proper person,
6. Have not been levied a penalty u/s 271J of Income Tax Act.
7. A Company or Partnership entity can also be registered as Valuer, if the same has been set up for rendering professional or financial services, including valuation services
8. Three or all the partners or directors are registered valuers

# DEMAND OF REGISTERED VALUERS IN INCREASING

- Valuations required under various provisions of the Companies Act
- Valuation required under SEBI Law and Regulations
- Valuation required under IBC for each asset – two valuers during CIRP
- Two valuations are required under liquidation process.
- Valuation required under SASHAKT SCHEME as per RBI Circular dated 12th February 2018

## VALUATION REQUIRED UNDER INCOME TAX ACT, 1961

Section	Nature of Assets	Valuer Type
50C	Immovable Properties	Valuer
55A	Any Capital Assets	Valuer
56 r.w. rule 11UA	Jewellery, Drawing, Paintings etc.	Registered Valuer
56 r.w. rule 11UA	Unquoted Shares and Securities	Presently Merchant Banker

# VALUATION REQUIRED UNDER COMPANIES ACT, 2013

Section	Particulars	Valuer Type
62(1)C	Valuation report for further Issue of Shares	Registered Valuer
192(2)	Valuation of Assets Involved in Arrangement of Non- cash transactions involving Directors	Registered Valuer
230(2)(c)(v)	Valuation of shares, property and assets of the Company under a scheme of Debt Restructuring	Registered Valuer
230(3)	Valuation report along with Notice of creditors/ shareholders meeting – Under scheme of compromise/ Arrangement	Registered Valuer
232(2)(d)	The report of the expert with regard to valuation, if any, would be circulated for meeting of creditors/ Members	Registered Valuer
232(3)(h)	The Valuation report to be made by the tribunal for exit opportunity to the shareholders of transferor Company –Under the scheme of Compromise/ Arrangement in case the Transferor company is Listed Company and the Transferee- company is an unlisted Company	Registered Valuer
236(2)	Valuation of equity shares held by the Minority Share Holders	Registered Valuer

# QUALIFICATIONS REQUIRED FOR REGISTERED VALUERS

## SECURITIES OR FINANCIAL ASSETS

Educational Qualification in specified discipline	Experience in specified discipline	Valuation specific education course
<p>Graduate in any stream And Member of the Institute of Chartered Accountants or The Institute of Cost Accountants of India or the Institute of Company Secretaries of India or MBA/PGDBM specialisation in finance or; Post Graduate Degree in Finance</p>	<p>Three years of experience in the discipline after completing graduation.</p>	<p>Courses as per syllabus specified under rule 5</p>
<p>Any other graduate level qualification in accordance with rule 4 as may be specified by the authority for a registered valuers organisation in its conditions of recognition. And also Any other post graduate level qualification in accordance with rule 4 as may be specified by the authority for a registered valuers organisation in its conditions of recognition</p>	<p>At least five years and three years of experience in case of graduate level degree and post graduate level degree respectively.</p>	<p>Courses as per syllabus specified under rule 5</p>



# **I. CONSULTANCY UNDER SASHAKT SCHEME OF RBI (CIRCULAR DATED 12/02/2018)**

- **RBI Circular dated 12th February 2018 for internal restructuring of defaulted debts**
- **Report of Committee constituted under the Chairmanship of Shri Sunil Mehta, CMD of Punjab National Bank**
- **Execution of Inter-Creditors Agreement (ICA) dated 23rd July 2018**
- **Internal restructuring is mandated by RBI within 180 days of the default**
- **Categorisation of defaults under SMA-0, SMA-01 and SMA-02 for early reporting of defaults for all accounts with an exposure of 5 crores and above**
- **Presently applicable to accounts with total exposure of 2000 Crores or above from all lenders**
- **Other Groups would be covered gradually**
- **Resolution Plan is required to be submitted by defaulters similar to IBC with sustainable debt and proposed restructuring**
- **Similar meetings of lenders with voting shares**



# NCLT OPTION FOR COMPANIES UNDER FINANCIAL STRESS

# WHEN A CORPORATE DEBTOR SHOULD SUO MOTO GO TO NCLT

**Section 10 empowers a corporate applicant to file an application for CIRP**

**Corporate Applicant means:**

- a) Corporate Debtor**
- b) Member or partner, who is authorised under constitutional document**
- c) An individual who is in charge of managing the operations and resources of the Corporate Debtor**
- d) A person who has the control and supervision over the financial affairs of the Corporate Debtor**

# WHEN A CORPORATE DEBTOR SHOULD SUO MOTO GO TO NCLT....Contd.

## Section 29A: Persons not eligible to be Resolution Applicant

- a) Undischarged insolvent
- b) Wilful defaulter
- c) NPA account of more than one year or the entire overdue amounts are paid with interest.
- d) Convicted for any offence for 2 years or more for any acts under 12th schedule or 7 years or more
- e) Disqualified to act as director under the Companies Act, 2013
- f) Prohibited by SEBI from trading or accessing in securities market
- g) Promoter of any Corporate Debtor where avoidable transactions u/s 43, 45, 50 & 66 are found an order has been obtained from Adjudicating Authority
- h) Guarantors to any Corporate Debtor under CIRP and the guarantee has been invoked by creditor and remains unpaid
- i) Any such disability corresponding to above clauses any other jurisdiction outside India.
- j) Has a connected person who is ineligible under these clauses

# Justification for Corporate Debtor going to National Company Law Tribunal

- a) Restructuring of stress at the initial stage before CD become ineligible for submission of Resolution Plan
- b) Situation can be controlled before the business is getting adverse impact by way of losing credibility, loss of customer trust, loss of human resources
- c) Corporate Debtor with too many litigations, statutory liabilities, high financial and operational debt but is having a good business model. Can be transferred to genuine business buyers without depleting further value. This may fetch best value for the business as the liabilities would be waived, which otherwise would not have been possible.
- d) Voluntary Liquidation u/s 59 of IBC for closely held companies for sale of properties. The properties can be transferred to shareholders in voluntary liquidation
- e) Earlier option with the promoters was either make the company as 'Zombie Company' and drag it along unlawfully.
- f) Other option was to start 'Phoenixing' and indulge in unlawful activities.
- g) Both these options may not be available now as anyone can take you to CIRP including workers, employees, shareholders, suppliers of goods or services, government departments against their dues, unsecured loans, depositors and financial creditors



# **Justification for Corporate Debtor going to National Company Law Tribunal ...Contd.**

- h) Banks were not doing any restructuring in the last 2 to 3 years and financial stress worsened further**
- i) NPA classification was being delayed in connivance with banks and other professionals, however the priorities of banks have changed now.**
- j) It is better that CD goes to NCLT before any other person make an application.**
- k) RBI Circular dated 12th February 2018 has not taken off yet for restructuring of cases.**
- l) Pre-packaged sale of running businesses**
- m) Example of an existing case of Steel Co.**
- n) Example of an existing case of Power Co.**

# Risk and apprehensions while taking the Corporate Debtor to NCLT

- a) Lose of investor confidence including banks, other financial creditors and suppliers of goods and services may impact going concern status of CD.**
- b) Promoters may lose the CD as someone else may bid higher amount and take over the company. The process of bidding would be open to all.**
- c) The entire process can be declared as malafide and promoters may be debarred from participating into bidding process or CD can be put to liquidation.**
- d) The forensic auditor may find some of the transactions u/s 43, 45, 50 & 66 and the promoters may become ineligible to participate in bidding process.**
- e) Example of LML**

# OPPORTUNITIES FOR PROFESSIONALS under PPIRP

Banks and FIs would be interested in restructuring under this structure because of committee approach and market value approach

Lenders will prefer this approach as most of the times the PPIRP cost would be borne by CD

CD would also prefer this route as it is less expensive, less intensive, lower stigma, less disruptive, faster and quicker

Proper checks and balances have been built in the Process

CD will prefer this process to circumvent pressure of multiple applications u/s 7 and 9



# OPPORTUNITIES FOR PROFESSIONALS UNDER PPIRP

RP will get fee from CD for the pre-appointment role also

RP will work on Base Resolution Plan and Preliminary Information Memorandum

Professionals other than Insolvency Professionals can also take up the assignment and appoint an IP after in principle decisions are taken by FCs

Mergers and Acquisitions of those companies with some financial stress can be handled under PPPIRP

Sale of business can be routed through PPPIRP



# INSOLVENCY ATTACKS

# HOW TO SAFEGUARD CORPORATE DEBTOR AND ITS ASSETS IN CASE IRP IS APPOINTED UNDER IB CODE

- a) The IRP shall make all efforts and endeavour to protect and preserve the value of the property of the CD and manage the operations of the CD as a going concern – Sec. 20(1)
- b) The IRP has all powers to manage the operations and run the business and do all necessary act as required for the business to be maintained as a going concern.
- c) The CD is protected by Moratorium u/s 14 of IBC and the assets of CD are protected from all negativities. The CD should use the opportunity and see the viability of the business
- d) The claims of creditors can be settled, and the applicant can file an application for withdrawal of application if approved by 90% of the voting share.
- e) Full support may be extended to IRP so that no litigation is started, and the business is not adversely impacted.
- f) In case eligible to participate in the bidding process, the exiting promoters must calculate the sustainable debt of the company with full fairness and should bid for the CD.
- g) IRP, if co-operated fully will run the operations with the help of existing KMPs including directors working full time for the Company.

# HOW TO SAFEGUARD CORPORATE DEBTOR AND ITS ASSETS FROM INSOLVENCY ATTACKS

- a) The present regime of “Pay or Parish” and awareness is spreading like fire.**
- b) CD can receive a notice u/s 8 of IBC from workmen, employees, suppliers of goods or services or from government authorities.**
- c) The option at time would be either to “Pay or Perish” and would be stressful.**
- d) Never ignore an invoice raised by any person, either pay or take necessary action to settle. In case, no settlement reaches, then register a dispute.**

# HOW TO SAFEGUARD CORPORATE DEBTOR AND ITS ASSETS FROM INSOLVENCY ATTACKS ...Contd.

- e) The only safeguard is “Pay or register a dispute” u/s 8(2) of IBC and dispute can be with regard to:
- the existence or the amount of debt
  - the quality of goods or service; or
  - the breach of a representation or warranty
- f) The dispute can be by way of pendency of a suit or arbitration proceedings or any other way before the receipt of notice u/s 8 of IBC
- g) Documentation of purchase department has to be improved and conditions regarding approval of quality of goods, representations and warranties should be added.
- h) Goods supplied without proper purchase order may or may not be accepted and debt would be incurred only on acceptance of goods.
- i) Claiming Input credit of GST and deduction of TDS and filing of TDS return has been considered as acceptance of goods and invoice.





# ROLE OF CAs PARTICULARLY STATUTORY AUDITORS

- a) IRP is having the authority to access the books of accounts, records and other relevant documents of CD available with statutory auditors, accountants, government authorities -Sec 17(2)(d)
- b) Punishment for falsification of books of CD – Sec 71 of IBC – any person alters or falsifies any books, papers or securities or makes any false or fraudulent entry in any books with the intent of defrauding the creditors – 3-5 years imprisonment or fine 1 Lakh to 100 Lakh or both
- c) Sec 147 of the Companies Act, 2013 – Punishment for contravention – fine 25K to 500K or 4 times of fee – for wilful and with the intent to deceive the creditors, shareholders – fine 50K to 2500K or 8 times of fee – Imprisonment for 1 year
- d) Sec 147 further provides that the auditor will refund the remuneration taken from the Company and pay compensation and damages to members, creditors and Govt authorities
- e) National Financial Reporting Authority (NFRA) has been set up with vast powers and there is a possibility of complaints against erring CAs to NFRA and the powers are very large. NFRA is having powers u/s 132 of the Companies Act, 2013 to fine 1 Lakh to 5 Lakh – 5 time to 10 times of fee – debarring from practice for 6 months to 10 years
- f) All depends upon the regulator – like IBBI if complainant will get response – everyone will file a complaint; if NFRA would be responsive – more complaints would be filed by creditors, government authorities, IPs (based on forensic audit report)



# PRACTICAL TIPS ON WHAT PROFESSIONALS' OVERLOOK FROM REPORTING POINT OF VIEW WHEN AN ACCOUNT SHOWS:

## **A. Signs of diversion of Bank Loan – deceiving other parties for personal gains – is classified as fraud**

- DBR.No.CID.BC.22/20.16.003/2015-16 dated 1st July 2015 titled as Master Circular on Wilful Defaulters has provided that in case Statutory Auditor has not reported such diversion, then the banks are required to report to:
  - I. ICAI
  - II. RBI (Department of Banking Supervision, Central office) for records and sharing the information with banks and CAG & MCA
  - III. IBA for records and circulating the information with banks for caution and removal from panels, if any
- **Standard on Auditing- 240 “The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements” puts the onus on the auditors to report the fraud w.e.f. 1st April 2014**
- **Section 143 of the Companies Act, 2013 puts an onus on the auditor to report any fraud and also report any non-compliance of Standards on Auditing**
- **CARO clauses (a) & (b) also require auditor to qualify or modify the audit report if any losses or litigation is foreseeable**
- **Clause 41 of the Listing Agreement fraud reporting to Central Government is required by auditors**
- **ICAI has given notices to the auditors of IL & FS**

## **B. Business cycle starts increasing**

- Business cycle starts increasing with higher inventory of RM, WIP & FG and higher credit period extended to customers.
- That means losses are being parked in current assets to deceive the creditors and present a rosy picture
- 'Zombie Company' scenario means carrying the corpse duly decorated with the objective of defrauding the creditors
- Diversion of funds out by padding up the purchase for the purpose of personal use of funds
- Increasing the closing stock to declare profit
- Not recording rejections, debit notes issued by customers, not recording purchase bills and amount paid is being shown as advances.
- Swelling of fixed assets without corresponding increase in capacity and business. That means loading losses to Capital Assets by higher capitalisation or by raising fake bills for fixed assets.
- Quantitative records of inventory is not satisfactory or complete or there is no records of inflow, outflow, consumption, yield, shortage, burning loss, wastage on each process and closing stock for each process or stage of inventory.
- Asset verification is primary duty of the auditor and in case not verifiable, it has to be reported.
- Auditors responsibility in reporting is the same as discussed earlier

## **Outstanding balances are not squared/ reconciled up bill to bill**

- **Bill to bill reconciliation is very important**
- **Third party confirmation is also necessary**
- **Asset verification is primary duty of the auditor and in case not verifiable, it has to be reported.**
- **Auditors responsibility in reporting is the same as discussed earlier**

**When Corporate Debtor requires more funds to meet out old known liabilities or demands enhancement of Fund or Non-Fund limits to fulfil its obligations.**

- **Evergreening: means the debt never comes down, repaid in one account, fresh loan in another account.**
- **Business cycle continuously going up, inventory is going up and credit extended to customer is also going up.**
- **Third party confirmations of receivables are not obtained**

**PRINCIPLES  
OF PUTTING  
\*RED FLAGS\*  
OR  
ISSUING  
GUARDED  
WARNINGS  
TO THE  
BANKERS &  
THE STAKE  
HOLDERS**



# A. RED FLAGS

- **Evergreening:** means the debt never comes down, repaid in one account, fresh loan in another account.
- **Business cycle continuously going up, inventory is going up and credit extended to customer is also going up.**
- **Third party confirmations of receivables are not obtained**
- **Physical verification of inventory or fixed assets is not allowed or not liked**
- **Market credit is also increasing constantly.**
- **Regular Capex in the same existing unit with little increase in the capacity or sales**
- **Always take suggestions about how to raise further loans**
- **Offers higher interest rates to friends and relatives**
- **Living beyond one's means, luxurious life to display that his business is doing well**
- **Unusually close association with vendor or customer, regular parties with creditors**
- **No delegation of authority in the accounts department**
- **The director will directly interact with you and will not allow the accountant to speak to you**

# B. GUARDED WARNING TO BANKERS AND CREDITORS

...Contd.

- First is warning to himself as auditor and start detailed due diligence and comply with all auditing standards
- Report all facts and observations in audit report or CARO after seeking clarification from the auditee
- Comply with RBI Master circular dated 1st July 2015
- Comply with SA 240 all duties u/s 143 of the Companies Act, 2013
- Must verify the financial statements submitted to banks and other creditors and also uploaded on MCA website

# TIPS FOR PROFESSIONALS UNDER CURRENT CRISIS

- Avail the professional opportunity under IBC and if not IP then should practice as consultant for the benefit of clients
- Should also adopt the profession of registered valuer as the opportunities are increasing under IBC, Companies Act, SEBI, Income tax, business transactions, Ind AS.
- Multiple sources of income will reduce your dependence on auditees and you can afford to achieve auditor's independence
- Early detection of stress and default regime
- Insolvency attacks on companies by operational creditors, workers and government authorities



# TIPS FOR PROFESSIONALS UNDER CURRENT CRISIS

- Forensic audit in each case under CIRP and forensic auditors are also reporting connivance of statutory auditors in most reports
- NFRA
- Section 147 & 132 of the Companies Acct, 2013
- Section 17(2)(d) and 71 of IBC
- RBI Master dated 1st July 2015 circular on wilful default and directions to banks would be adhered to more seriously.
- Proper audit, due diligence and proper reporting
- Proper guidance to clients and discuss the changed environment with clients

*Thank  
You*

CA. ANIL GOEL

Insolvency Professional



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