



## **STATEMENT OF BEST PRACTICES**

### **IP PLANNING BEFORE DAY 1**

#### **I. Introduction.**

Statements of Best Practices are guidance documents issued for the use of insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016 (“**Code**”).

This gives guidance as to the best practice to be adopted by the Insolvency Professionals and is persuasive rather than mandatory.

Objective of this document is to provide guidance on planning which Insolvency Professional (IP) should consider before accepting an appointment as an Interim Resolution Professional (IRP). This document would only be applicable in case of a first time appointment of an IRP and this does not cover situations where a Resolution Professional is replaced by CoC or replaced during CIRP and also in case of appointment of a Liquidator.

Some of the key factors which as IP should consider will include:

#### **II. Independence, Conflict check and code of Ethics**

An Insolvency professional shall consider following provision of the IBC 2016, and other practical consideration with regards to Independence, Conflicts and Code of Ethics before accepting appointed as an IRP.

IRP should make assessment if he is independent of corporate debtor, and s/he should be considered independent of the corporate debtor, if he:

- a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013 (18 of 2013), where the corporate debtor is a company;
- b) is not a related party of the corporate debtor; or
- c) is not an employee or proprietor or a partner:
  - i. of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor; or
  - i. of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm,

in the last three financial years.

A resolution professional shall make full disclosures at the time of his appointment and thereafter in accordance with the Code of Conduct.

An insolvency professional shall not take up an assignment under the Code if he, any of his relatives, any of the partners or directors of the insolvency professional entity of which he is a partner or director, or the insolvency professional entity of which he is a partner or director is not independent, in relation to the corporate person/ debtor and its related parties.

A resolution professional, who is a director or a partner of an insolvency professional entity, shall not work as a resolution professional in a corporate insolvency resolution process if the insolvency professional entity or any other partner or director of such insolvency professional entity represents any of the other stakeholders in the same corporate insolvency resolution process.

Consider the ethical implications of accepting an appointment and whether there would be any conflict of interest, or threat to the Fundamental Principles of the Insolvency Code of Ethics.

IRP should evaluate if he is in any manner related/connected to a particular stakeholder, which may result in him working for the benefit of a particular stakeholder and not for all the stakeholders.

An insolvency professional must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments.

If the Corporate debtor is part of large Group structure, consider any potential conflict with the parent company and other companies of the group.

### **III. Discussion with Applicant**

Discuss with the applicant the reasons for CIRP and the objective to be pursued. IRP should evaluate the intent of the applicant to initiate the proceedings. He may also inform the applicant regarding section 65 of the Code and about the implication of Fraudulent or malicious initiation of proceedings.

In case of any confidential information is provided by the applicant, IP might have to sign a Non-Disclosure Agreement (NDA). However, IRP should be carefully review terms and condition of the NDA and avoid signing off to any terms and condition which may impact any of his duties or responsibility under the code, in case he is appointed as an IRP. (Refer to confidentiality document)

Understand the details of debt, default and any correspondence done with the corporate debtor (in case the applicant is a Financial or operational creditor). Consider how any pre-CIRP planning work would be paid for. [Also, refer statement of best practice regarding conflict]

Discuss possibilities of doing a detailed planning document before the application is filled with NCLT. Planning document would include a plan on how the CIRP process would be executed,

along with a potential resolution plan after discussion with key stakeholders, role of different stakeholders during CIRP, communication plan etc. Planning documents should be done with the intention to minimise the time spent under CIRP and hence any disruption in the operations during CIRP.

While working on a planning document before appointment, full disclosure should be made to all Committee of Creditors members regarding nature of work done and fee charged for the same. In case required same should also be disclosed in a letter to NCLT.

Understand if any discussion can happen with other key stakeholders like financial creditors, key operational creditors, management etc

If the applicant is a FC or an OC, what support can be expected from the management and directors of the corporate debtor.

Discuss in case of any interim funding requirement during CIRP, would the applicant be supporting with the interim funding.

IP can also request the applicant to provide a copy of the proposed application to NCLT. This might help the IP to understand the details of the debt and the default.

Applicant may want the IP to provide a declaration along with Form 2 under rule 9, of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule 2016. In the declaration would have to certify that the facts in the application are true, accurate and complete and a default has occurred in respect of the relevant corporate debtor. IP would be required to review certain documents like audited financial statement, legal notices, CIBIL report (if available), loan documents etc to help him in reaching such conclusion. However, IP should not in any manner advice the applicant on such documents which may create a conflict at a later stage.

#### **IV. Details about the Corporate Debtor, Debt and Default**

Obtain a company search. Make a note of any items relevant to the IP. For eg: details about operations, size, any material litigation, group structure, recent financial performance, recent media coverage, auditors, etc. Consider whether there are any environmental issues or any health & safety or fire safety issues.

Establish if the company is subject to any form of insolvency proceedings and consider the effect of existing proceedings on the company's ability to CIRP.

Collect information (to the extent possible) on the financial creditors, total debt, security interest created, default and any recent restructuring done by the financial creditors

Potential reasons for the Corporate Debtor to get to the current stage of Insolvency. Broadly classify them into issues related to Industry corporate debtor operates, management issues,

change in regulatory environment, change in competitive landscape, outdate products / services etc

If it is envisaged that CIRP would involve running the operations of the Company, consider very carefully the potential risks and issues involved. Also, corresponding resource planning.

## **V. Resource planning**

Team size which an IRP would need to be based on:

- complexity and size of the operations of the corporate debtor
- estimated manpower gap with the corporate debtor team
- sector/industry knowledge required based on the operations of the corporate debtor
- exceptional responsibility falling on the insolvency professional
- any local language requirement to communicate with the team
- Material litigation

IRP should assess the organisation structure for key positions and people responsible to take up these positions during CIRP.

Personal Independence Declaration forms should be completed by the engagement team members.

IRP should discuss the fee for first 30 days from appointment with the applicant, as same would be paid by the applicant to the extent not ratified by the CoC. IRP should also look for getting some sort of bank guarantee or money in an escrow account, in case there is a possibility of applicant not paying the fee later.

Regulation 33 of the CIRP Regulations provides that the fee to be paid to the interim resolution professional and the expenses that can be incurred by the interim resolution professional will be fixed by the person who applies for an insolvency resolution process under the Code. These fee and expenses are to be borne by the applicant, except to the extent the committee of creditors agrees to ratify the fee and expenses. Hence, full disclosure should be made with the applicant regarding the team and cost.

Detail disclosure should be made regarding the assumption taken while doing the resource planning.

## **VI. Communication plan**

Communication plan should be made specific to each case. It will depend upon the size of the operations, complexity and any disruption possible in the going concern of the corporate debtor due to lack of communication.

Based on discussions with the applicant and independent research, make a communication plan for intimation to key stakeholders. Communication plan should broadly include:

- Different category of audience (financial creditors, operation creditors, employees, directors, trade unions, statutory authority, customers, regulators etc)
- Mode of communication (written, one to one, group etc)
- Timing of communication (on order date, within 7 days of order)
- Key content of the message for different audience (order details, IBC process, moratorium, suspension of BoD, role of IP, key contact point during CIRP, how does it impact them etc)
- Who will deliver the message for eg IRP individually or along with the management?

Identify key place of business of the corporate debtor, for the public announcement in one English and one local language newspaper. Negotiate with the agency for the Public announcement as per CIRP regulation of IBC 2016.

Establish whether the company has any social media accounts – eg Facebook, Twitter, LinkedIn. Manage the social media accounts as appropriate, to ensure any disruption.

## **VII. Day 1 Planning**

Assess if there is a need for additional security or to change the existing security on day 1 to protect the value of physical assets of the corporate debtor.

Assess need of a physical verification of the assets of the corporate debtor. Consider the security of books and records and take any additional steps necessary for safeguarding them. Obtain all computer system passwords and ensure that backups are made of the information on the computer system.

Identify 2 valuers, who need to be appointed within 7 days of IRP appointment.

What are the key task which an IRP would be required to do immediately after day 1 to maintain going concern of the corporate debtor. For eg: Lease agreement, key employees, key suppliers, statutory approval etc

Identify any professional required on day 1. For eg: Interim COO, legal advisor, accountant etc