



## **STATEMENT OF BEST PRACTICES**

### **FIRST 2 WEEKS FROM THE DATE OF APPOINTMENT OF INTERIM RESOLUTION PROFESSIONAL**

#### **I. INTRODUCTION**

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

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

This statement has been prepared to summarise what is considered to be the best practices for planning by the Interim Resolution Professional (IRP) for the first two weeks post the appointment. These guidelines would be more applicable in case of a fresh appointment under a NCLT order and not in case of transfer of case from IRP to RP or from RP to RP during CIRP. These might also have limited applicability in case of liquidation.

The Code stipulates the duties and powers of an Interim Insolvency Professional and accordingly, the Best Practices is limited to the key steps which an Interim Insolvency Professional adopts as voluntary best practices. This Statement of Best Practices only details guidance on certain key role of IRP which has been divided into five categories as detailed below:-

- (i) Intimation and Public announcement as covered under section 15 of IBC
- (ii) Suspension of the Board of Directors as covered under section 17 of IBC
- (iii) Running the Company as going concern as covered under section 20 of IBC

- (iv) Taking control and custody of the assets as covered under section 18 of IBC
- (v) Collecting information as covered under section 18 of IBC

## **II. PROVISIONS OF CODE**

Section 17 read with 18, 19, 20 & 25 of the Code clearly set outs the duties and powers of the Insolvency Resolutions:-

- Management of affairs of the Corporate Debtor by the IRP
  - *Vesting of management of affairs in the IRP*
  - *Powers of Board are required to be suspended*
  - *Reporting of key managerial staff/ officers to IRP*
  - *Instructions to the financial institutions maintaining accounts to act on instructions of IRP*
  - *Act and execute all documents*
  - *Authority to access electronic records*
  - *Authority to access books and records*
- Duties of IRP
  - *Engage registered valuers to ascertain liquidation value*
  - *Collect information of assets, finances and operations*
  - *Receive and collate claims*
  - *Constitute committee of creditors*
  - *Monitor assets of the corporate debtor*
  - *Filing information with IU*
  - *Taking control and custody of CD's assets*
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- Management of Operations of CD as going concern
  - *IRP shall endeavour to protect and preserve the value of the property of the CD*
  - *Manage operations as a going concern*
  - *Authority to appoint accountants, legal or other professionals*
  - *Enter into contracts*
  - *Raise interim finance*
  - *Issue instructions to personnel*
  - *Take all steps as necessary*

## **III. STEPS TO BE TAKEN ON APPOINTMENT:-**

- (i) **INTIMATION – DAY 1**

- (a) Interim Insolvency Professional has a duty to comply with the provisions of the Code for making public announcement within 3 days of appointment.
- (b) Interim Insolvency Professional must ensure that a copy of Public Announcement is displayed on the website of the Corporate Debtor Company within 3 days from the date of his appointment. To also ensure that it is displayed in a manner, that the announcement is clearly visible on anyone visiting the website of the Company.
- (c) Interim Insolvency Professional must also ensure that a copy of Public Announcement is also displayed on the website of the IBBI (Board) as soon as possible by the Interim Insolvency Professional.
- (d) Public Annoucement should also include that a moratorium has been imposed and all suits/legal proceedings against the company are stayed. A copy of order
- (e) Interim Insolvency Professional must take reasonable steps to inform all parties relating to Corporate Debtor including but not limited to the Board of Directors, Financial Creditors, key Operational Creditors, suppliers, customers, employees, relevant regulatory authorities, bankers of the Corporate Debtor about the appointment of the Interim Insolvency Professional and the fact that the Company is under Corporate Insolvency Resolution Process.
- (f) An endeavour shall also be made by the Interim Insolvency Professional to inform all concerned officeholders or personnel incharge of the assets of the Corporate Debtor about the appointment of the Interim Insolvency Professional and the fact that the Company is under Corporate Insolvency Resolution Process.
- (g) A copy of Public Announcement along with copy of order passed by the Adjudicating Authority should be placed on the Notice Board of the Company.

- (h) All correspondence issued on the letter head of the Company by the Interim Insolvency Professional or by any key personnel should include the name of the Company (under Corporate Insolvency Resolution Process by NCLT vide order dated xxxxx).

**(ii) SUSPENSION OF BOARD OF DIRECTORS**

- (a) Insolvency Professional should identify the Compliance Officer / Company Secretary of the Corporate Debtor and investigate compliances which are required to be complied with immediate effect.
- (b) Take appropriate steps to assess compliances required to be made immediately and if necessary, appoint professionals including but not limited to legal advisors, Company Secretary or Chartered Accountants.
- (c) Interim Insolvency Professional should make enquiries of the promoters, directors and senior employees, statutory auditors, legal advisors of the corporate debtor by sending questionnaires and/or interviewing them, as appropriate.
- (d) Interim Insolvency Professional shall at all times ensure that all reasonable steps are taken by him to achieve a key objective i.e. keeping the Company as a going concern and to maintain financial status quo to the extent possible.
- (e) Adequate steps should be taken to document all initial assessments, investigations and conclusions, including any conclusion that further investigation or act is not required or feasible with regards to the compliances to be made by the Corporate Debtor.

**(iii) TAKING CONTROL AND CUSTODY OF ASSETS**

- (a) Interim Insolvency Professional shall take appropriate measures to protect and preserve the assets of the Corporate Debtor.

- (b) Interim Insolvency Professional should identify the assets of the Corporate Debtor including movable and immovable assets as far as possible. IRP shall also wherever possible take list of assets from the directors of Corporate Debtor on day 1 in order to ascertain any possible risk or threat to the assets.
- (c) Take appropriate steps to make a physical verification of the assets identified, if required and appoint agency or personnel, if required to carry out physical verification of the assets.
- (d) Take measures to carry out an inventory as far as possible.
- (e) Adequate steps should be taken to review the security on the assets of the Corporate Debtor and if required, appoint additional or new security agency in case of a threat or concern.
- (f) Copy of Public Announcement be pasted conspicuously at a prominent place on the out door of each asset/property of the Corporate Debtor. This has to be taken photograph as a documentary proof of possession. The acknowledged copy of the Public Notice should be duly Notarised to make it legally authenticated. The Notary would remark the Public Announcement was either served and pasted before him or pasted before him as the case may be.
- (g) Interim Insolvency Professional should make best endeavours to obtain a Management Representation Letter.
- (h) In case there is a concern to safety, security should also be reviewed to protect information and data like financial records, books of accounts, technical operational data, intellectual property etc either by taking appropriate backup or putting security to safe guard.
- (i) In case of factory operations, if there is risk perceived regarding unauthorised movement of goods, CCTV camera can be installed if not already installed and footage might be reviewed at regular interval.

- (j) Identify the Bank Accounts of the Company and if required, open a new Bank Account and change signatories to take control over the assets of the Company.
- (k) Interim Insolvency Professional may adopt any measures to take control of the assets and if required, seek assistance of police. For illustration purposes: in case of hostile workmen or union where the IRP is unable to enter the unit of the corporate debtor company in that case the IRP should contact local police and produce a copy of order passed by NCLT to the police authorities for assistance.

**(iv) GOING CONCERN**

- (a) Insolvency Professional should understand the existing organisation structure of the corporate debtor and identify and communicate with the key managerial personnel of the Corporate Debtor.
- (b) Insolvency professional may consider issuing instructions to the head of departments, in terms of what authority they have to carry out day to day to operations of the corporate debtor and in what cases prior consent or approval might be required from the IRP.
- (c) Interim Insolvency Professional should communicate with the promoters, directors and senior employees by sending questionnaires and/or interviewing them, as appropriate for taking their assistance for making the Company run as a going concern during CIRP.
- (d) Review and evaluate the existing key personnel and if required, negotiate deals with the existing personnel to continue with the Company. IP shall make endeavour to fill gaps in the management for efficiency wherever possible.
- (e) Identify key suppliers of the Company and ensure their support.

- (f) Review and evaluate existing contracts, leases and transactions entered into before the commencement of resolution process.
- (g) Appoint Experts including but not limited to technical experts or other professional as may be necessary for smooth functioning of the unit of the Company.
- (h) Evaluate and assess the cash flow of the Company for the first two weeks and identify need for raising interim finance.

**(v) COLLECTING INFORMATION**

Information available to IP will vary from cases to case depending upon the quality and completeness of the Company's books/records and co-operation from the key managerial staff. However, as best practices, IP should ensure that following information is obtained and considered:-

- (a) Obtaining knowledge and understanding of the Company, its promoters and directors, managers and those responsible for its governance and business activities.
- (b) Acquiring knowledge and understanding of the nature of Company's business including complexities of its operations.
- (c) Locating Company's books and record in whatever form and ensure that they are secured.
- (d) Identifying key managerial staff.
- (e) Take steps to create a Data Room, if required.
- (f) Take steps to collect information from the Information Utilities, if any.

- (g) Enquiries should encompass whether prior transactions by the company, or the conduct of any person involved with the company, could give rise to an action for recovery under the relevant legislation. In addition, inquiries be made in order ascertain whether avoidance transactions have been undertaken.
- (h) During the initial investigations, IRP may come across possible threats to fundamental principles or may across information which may show that the CD has siphoned off assets etc. IRP shall immediately upon coming to know the said facts shall bring to the notice of both the NCLT and the creditors of the CD.
- (i) IRP to take appropriate steps to ensure all suits/legal proceedings against the CD are stayed in terms of moratorium.
- (i) It will always be for the Interim Insolvency Professional to justify his actions. Accordingly, the records an Interim Insolvency Professional in relation to the steps that he took and the conclusions that he reached, should be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of his actions. (use code language)
- (j) An Interim Insolvency Professional should make all endeavours to document all initial assessments, investigations and conclusions, including any conclusion that further investigation or act is not required or feasible and also any other decision.