

Insolvency and Bankruptcy Board of India

1st July, 2020

Discussion Paper

This discussion paper deals with the issue of number of assignments handled by Insolvency Professionals (IPs) under the Corporate Insolvency Resolution Process (CIRP) and Liquidation (including Voluntary Liquidation) Process under the Insolvency and Bankruptcy Code, 2016 (the Code).

2. After considering the suggestions, the Board proposes to issue necessary guidelines in this regard, in exercise of its powers and functions under clauses (p) of sub-section (1) of section 196 of the Code, to the extent necessary.

Issue : Restricting the number of assignments to be handled by IP

Statement of Problem

3. The Code aims for maximisation of value of assets of the Corporate Debtor (CD). Value is usually dependent on the time taken to resolve the insolvency since it erodes over time and rapidly once the insolvency proceedings commence. Therefore, any delay in the insolvency resolution process may make reorganisation of the CD difficult and would induce liquidation, thereby destruction of value for the stakeholders. Also, delay in liquidation process yield lower than expected recoveries.

4. Considering that time is the essence of the Code, the Clause 13 of Code of Conduct of 'the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016' [IP Regulations] provide that an IP must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all the stakeholders involved for the timely discharge of his duties.

5. While, the Code of Conduct for IPs stipulated vide IP Regulations provide that IP must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments, neither the Code nor the Board has put any restriction on number of assignments to be handled by IP at a given point of time. It is thus market driven which is in consonance with the views of Bankruptcy Law Reforms Committee (BLRC), that conceptualised the Code.

Role of IP in Corporate Insolvency vis-à-vis Provisions of Companies Act, 2013

6. The profession of IP is however a special one. An IP has to protect and preserve the value of the property of the CD and manage the affairs of the CD as a going concern with full responsibility as he replaces the Board. Though he can hire professionals for help, an IP is expected to operate at the efficiency level of the Managing Director of the company. It is however pertinent to note that in a company, the execution function rests with an individual thereby ensuring the focused approach in the best interest of company. For the said reason, the individual is restricted to discharge executive function in multiple companies. For instance. Section 2(51) and section 203 of the Companies Act, 2013 (the Companies Act) deal with the definition of "Key Managerial Personnel" and the "Appointment of key managerial personnel" respectively. While section 2(51) enumerates the

various personnel of a company falling under the term “key managerial personnel”, section 203 inter alia provides for a cap on the number of such roles that can be undertaken by an individual to two, under certain specific circumstances. Section 2(54) of the Companies Act, 2013 defines the term “managing director”. According to section 2(54), a person shall be managing director (MD) of the company only if he is entrusted with substantial powers of management which are not otherwise exercisable by a director. Sections 2(53) and 2(94) define “manager” and “whole time director”. A manager has been defined to mean a person who has the management of whole or substantially the whole of the affairs of the company, whereas a whole-time director means a director who is entrusted with the day-to-day management of the company. It is also pertinent to note that a person cannot act as a whole-time director in more than one company. Key managerial personnel, managing director, manager or a whole-time director perform functions vital to the functioning of the company. The roles/responsibilities attached to these offices require dedicated efforts and concrete decision making.

Skewed work allocation amongst IPs

7. On the basis of information available, it is observed that a few IPs are handling too many assignments under the Code, which is detrimental to the institution of IP in the long run.

Emerging jurisprudence

8. The Board have come across several orders (few such listed below) of Hon’ble Supreme Court and Hon’ble Adjudicating Authority providing clarity on role of IP/ directing IPs from time to time, to refrain from accepting too many assignments in the best interest of the processes.

Sl. No.	Particulars	Observations	Key Takeaway
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- Hon'ble Supreme Court Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67/2019 and other petitions]

It is the responsibility of the resolution professional (RP) to (a) manage the affairs of the corporate debtor (CD) as a going concern during corporate insolvency resolution process (CIRP), (b) appoint and convene meetings of the CoC, so that they may decide upon resolution plans, and (c) collect, collate and finally admit claims of all creditors, which must be examined for payment, in full or in part or not at all, by the resolution applicant and be finally negotiated by the Committee of Creditors (CoC). The role of the RP is not adjudicatory but administrative

In its order dated 15th September, 2019, the professional (RP) to (a) Hon'ble Adjudicating Authority held: manage the affairs of the corporate debtor (CD) as a going concern during corporate insolvency resolution process (CIRP), (b) appoint and convene meetings of the CoC, so that they may decide upon resolution plans, and (c) collect, collate and finally admit claims of all creditors, which must be examined for payment, in full or in part or not at all, by the resolution applicant and be finally negotiated by the Committee of Creditors (CoC). The role of the RP is not adjudicatory but administrative

"27. The detailed provisions that have been stated hereinabove make it clear that the resolution professional is a person who is not only to manage the affairs of the corporate debtor as a going concernbut is also a key person who is to appoint and convene meetings of the Committee of Creditors, so that they may decide upon resolution plans, and (c) collect, collate and finally admit claims of all creditors, which must be examined for payment, in full or in part or not at all, by the resolution professional....In fact, in ArcelorMital India (supra), this Court referred to the role of the resolution professional under the Code and the aforesaid Regulations, making it clear that the said role is not adjudicatory but administrative..."

- In its order dated 7th August 2017, the Hon’ble Adjudicating Authority observed:
- Hon’ble NCLT - “...**Therefore, we agreed with the Hyderabad Bench submissions of the respondents considering IDBI Bank Ltd. v. his previous three assignments to large Lanco Infratech companies and the current corporate debtor Ltd [C.P.(IB)No. 111/7/HDB/2017] facie view that the proposed IRP would not find sufficient time to act as IRP for the respondent company.**”
- 2.
- In its order dated 23rd March 2018, the Hon’ble Adjudicating Authority observed:
- “...**He is also appointed the Liquidator in another two matters...**”
- “**In the case in hand, the Resolution Profession Process was to be completed within the extended period of CIRP, by dated 25.02.2018. But the Resolution Professional failed to submit the progress report/the resolution plan within the statutory period i.e. 270 days. The Resolution Professional has filed this application on 19.03.2018, after the issuance of notice by order of this Tribunal dated 13.03.2018 for submission of progress report/Resolution Plan against him. The RP was also directed to remain present in the Court in person on 19.03.2018. The above act of the RP shows that he was not careful in following the timeline prescribed under the Insolvency and Bankruptcy Code.**”
- 3.
- Hon’ble NCLT - Allahabad Bench Anil Goel v. LML Ltd. [CPNo. (IB)55/ALD/2007 with CA No.73/2018]
- IP must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments.

Proposed action

9. Keeping in mind the provisions of the Companies Act, 2013, the skewed work allocation amongst the IPs and the observations of Hon’ble Supreme Court /Hon’ble Adjudicating Authority, as mentioned above, and given the expansive and intense responsibilities of an IP in corporate processes, it is proposed to issue necessary guidelines to IPs advising them to limit the maximum number of assignments handled by them [under CIRP/Liquidation (including Voluntary Liquidation) process under the Code], to five, at a given point of time, subject to the same being in line with the matrix given below:

(*Maximum no of assignments permitted)

Turnover of CD	Manufacturing / Trading / Service / Others
<= Rs. 1000 crore	5
> Rs.1,000 crore < = Rs.5,000 crore	4

> Rs.5,000 crore < = Rs.10,000 crore	3
> Rs.10,000 crore	2
> Rs. 50,000 crore	1

**any assignment as IRP, RP or Liquidator (including Voluntary Liquidation) for the given CD*

Economic Analysis

10. The processes under the Code however requires a unique combination of skill sets in terms of subject matter knowledge and management skills for an IP. At different stages of transactions, different sets of skills are called for. A spike in one area of expertise will not be sufficient to create a uniform experience for stakeholders. Further, it cannot be ignored that no two IPs possess identical set of qualification, experience, skills and expertise. Similarly, no two CIRPs are same as it involves diverse businesses, complex corporate structures, varied stakeholders.

11. The said restriction on an IP will put a check on undesirable instances of delay and disturbance to the processes led by IPs while simultaneously handling too many assignments under the Code. With limits in place, quality of output is expected to improve; this, in turn, will facilitate *inter alia* realisation of the objective of value maximization as enshrined in the Code. The major inputs for violation will be through complaints and therefore, the cost of surveillance for the Board may not be significant. Further, this will be conducive for development of market for professionals as more talent will be drawn towards IP profession.

Public Comments:

12. It is considered necessary to solicit public comments on the following points relating to the afore-stated issue:

- (a) Should there be any restriction on number of cases, which an IP can handle at a given point of time?
- (b) If yes, whether the proposed action at **Para 9** is adequate or any change is required?
- (c) If no, what should be the criteria for putting a threshold (for example - assets, turnover, number of claims etc)?
- (d) What should be the minimum or maximum threshold under the Criteria for such restrictions?

13. Comments may be submitted electronically by 25th July 2020. For providing comments, please follow the process as under:

- (i) Visit IBBI website, www.ibbi.gov.in;
- (ii) Select 'Public Comments'; and then select '**Discussion paper - Restricting the number of assignments to be handled by IP**';

(iii) Provide your Name, and Email ID;

(iv) Select the stakeholder category, namely,-

- (a) Corporate Debtor;
- (b) Personal Guarantor to a Corporate Debtor;
- (c) Proprietorship firms;
- (d) Partnership firms;
- (e) Creditor to a Corporate Debtor;
- (f) Insolvency Professional;
- (g) Insolvency Professional Agency;
- (h) Insolvency Professional Entity;
- (i) Academics;
- (j) Investor; or
- (k) Others.

(v) Select the following for making comments,

- a. Para 12 (a)
- b. Para 12 (b)
- c. Para 12 (c)
- d. Para 12 (d)

(vi) Click 'Submit', once done.

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