

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi-110001

Facilitation / 001 / 2018

29th June, 2018

Dear Madam / Sir,

Subject: In aid of Insolvency Professionals conducting Corporate Insolvency Resolution Process

An insolvency professional (IP) plays a key role in corporate insolvency resolution process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (Code). A whole array of statutory and legal duties and powers is vested in him. Section 20 of the Code requires him to make every endeavour to protect and preserve the value of the property of the corporate debtor (CD) and manage its operations as a going concern. Section 23 requires him to conduct the entire CIRP and manage the operations of the CD. He exercises powers of the Board of Directors of the CD under resolution. He is, in fact, the driving force and the nerve-centre in an insolvency proceeding of a CD.

2. The law facilitates and empowers the IP to discharge his responsibilities effectively. It obliges every officer of the CD to report to him. It also obliges the promoter of the CD to extend all assistance and cooperation to him. There is an assurance of supply of essential goods and services to, and a moratorium on proceedings against, the CD. The Code empowers the IP to appoint professionals to assist him. He can seek orders from the Hon'ble Adjudicating Authority (AA) if he comes across any preferential, undervalued, extortionate, or fraudulent transaction. He can take support services from the insolvency professional entity of which he is a partner / director. He has protection for actions taken in good faith. There is bar on trial of offences against an IP except on a complaint filed by the IBBI.

3. The AA through its various orders has been aiding the IPs in discharge of their responsibilities. This communication brings a few instances of such aid to the notice of the IPs:

a. M/s. Super Multicolor Printers (P) Ltd. and Prakash Dev Sharma Vs. Senior Executive Engineer, Himachal Pradesh Electricity Board and Punjab National Bank [CA No.72/2017 IN CP (IB) NO. 08/Chd/CHD/2017].

Prior to commencement of the CIRP, there existed an arrangement between the CD and Punjab National Bank (PNB) allowing the latter to recover 5% from sales of the CD through a transaction recovery account. A prayer was made by the RP for a direction to PNB for stopping 5% recovery from the sales during moratorium period and refunding the amount already recovered by PNB from sales after commencement of CIRP. The AA allowed the prayer.

b. The Central Bank of India and The State Bank of India Vs. M/S. Ashok Magnetics Ltd. [CP/551 (1B)/CB/2017].

The IRP made efforts to take charge of the assets of the CD, but there was stout resistance from the CD. He, therefore, prayed for police assistance to discharge his functions as IRP. The AA observed: “ ..., we direct the Superintendent of Police in whose jurisdiction the Registered

Office of the Corporate Debtor viz., M/S. Ashok Magnetics Ltd., is situated, i.e. at B, 73, SIPCOT Industrial Complex, Gummidipoondi, 601 201; the Commissioner of Police, Chennai, having jurisdiction over Royapettah/Teynampet Police Station where Corporate Office of the Corporate Debtor is situated and the Superintendent of Police, Puducherry having jurisdiction over Erripakkam Village, Nettapakkam Commune, Pondicherry where the Factory of the Corporate Debtor is situated, to give proper Police assistance and personal security to the IRP so that he can take charge of the assets of the Corporate Debtor and perform the functions as per the provisions of I&B code, 2016..... The Director of the Corporate Debtor are also directed to furnish the books of accounts, list of assets, list of Financial and Operational Creditors, list of documents and other relevant particulars as envisaged in the I&B Code, 2016 and extend all co-operation to the IRP... ”

c. M/s Alchemist Asset Reconstruction Co. Ltd Vs. M/s Hotel Gaudavan Pvt. Ltd. [CP/CA. No. (IB)-23(PB)/2017].

The IRP prayed for protection for all acts done by him in good faith and to save him from the frivolous allegations made in a FIR. The AA observed: *“If, there is any complaint against the Insolvency Professional then the IBBI is competent to constitute a disciplinary committee and have the same investigated from an Investigating Authority as per the provision of section 220 of the Code. If, after investigation ‘IBBI’ finds that a criminal case has been made out against the Insolvency Resolution Professional then the ‘IBBI’ has to file a complaint in respect of the offences committed by him. It is with the aforesaid object that protection to action taken by the IRP in good faith has been accorded by section 233 of the Code. There is also complete bar of trial of offences in the absence of filing of a complaint by the ‘IBBI’ as is evident from a perusal of section 236(1) (2) of the code. Therefore, a complaint by Harendra Singh Rathore, a former director with the SHO, Police Station would not be maintainable and competent as the complaint is not lodged by the IBBI. ..the jurisdiction would vest with Investigation Officer only when a complaint is filed by ‘IBBI’.”*

d. Sunrise 14 A/S, Denmark Vs. Muskaan Power Infrastructure Ltd. [CA No. 150/2017 in CP (IB) NO. 39/Chd/Pb/2017].

The RP prayed for a direction under sections 19(2) and 19(3) of the Code. Since two respondents did not comply with directions of RP and refused to accept the notice, the AA issued bailable warrants to secure their presence. It directed the RP to collect the bailable warrants from the registry and deliver to Commissioner of Police, Ludhiana to get the same executed. At the next hearing, the AA allowed a weeks’ time to the respondents for handing over the original record of the company and to produce list of assets of the company.

e. Bank of India Vs. Renish Petrochem FZE & Anr. [I.A. Nos. 277, 319, 320 & 321 of 2017 in C.P. No. (IB) 33/9/NCLT/AHM/2017].

In this matter, the IRP constituted the CoC and convened its first meeting. In the said meeting, the CoC resolved to replace the IRP, but did not propose the name of another IP to act as RP. In a subsequent meeting which was not convened by the IRP, as required under regulation 18 of the CIRP Regulations, the CoC decided to appoint another IP as the RP . The AA observed: *“The IB Code, Rules and Regulations is a complete Code by itself and, whenever any special Act or the Rules framed thereunder prescribe a particular procedure it has to be followed and a party cannot be permitted to deviate from such procedure.”* Accordingly, the AA directed

the IRP to convene a meeting of the CoC in accordance with the CIRP Regulations to discuss and decide the appointment of RP in place of IRP.

f. Punjab National Bank Vs. Divyajyoti Sponge Iron Pvt Ltd [CA (IB) No. 570/KB/2017 in C.P (IB) No. 363/KB/17].

The RP sought necessary assistance and security to him to visit factory premises of the CD to carry out statutory duties and obligations peacefully. The AA ordered: “*Keeping in view of the direct threatening by the corporate debtor it is hereby ordered that copy of this order may be served on the Director General of Police, West Bengal, Superintendent of Police, Bankura and in-charge of Mejia P.S. for making proper and effective assistance to the Resolution Professional in valuation of the company. In discharge of his duty any interference in the work of the Resolution Professional, action shall be initiated against the corporate debtor and it will be presumed that that corporate debtor is not obeying the order of the Court. It is expected that corporate debtor should fully cooperate with the Resolution Professional.*”.

g. Punjab National Bank Vs. Mintri Tea Company Pvt. Ltd. [CA (IB) No. 518/KB/2017 in CP (IB) No. 421/KB/2017].

The RP sought direction for police protection. The AA directed: “*...Superintendent of Police is directed to provide Police protection so that RP may discharge his duties and take over the management. It is also expected from the corporate debtor to fully cooperate the RP, failing which action will be initiated against the corporate debtor u/s. 70 of Insolvency and Bankruptcy Code, 2016.*”

h. RP (in the matter of ORCHID PHARMA) Vs. Lakshmi Vilas Bank & ORCHID PHARMA Ltd. [CA No. CA/26/IB/2018 in CP/540/(IB)/2017].

The CIRP of Orchid Pharma Limited commenced on 17th August, 2017. The shareholders passed a resolution for appointment of M/s. CNGSN & Associates LLP as the statutory auditor for a period of five years commencing on 1st April, 2017. However, the erstwhile auditor was not willing to give NOC unless the RP cleared 50% of its outstanding dues. The RP took up the matter with the AA, which directed: “*The earlier auditor, M/s SNB Associates, is directed to issue NoC as well as transfer the necessary papers to the newly appointed auditor of the corporate debtor, M/s. CNGSN & Associates. It has been noted by this tribunal that the dues of the earlier audit has been admitted to the extent of Rs.1,23,69,272 and it has been included as the operational credit with respect to the corporate debtor.*”.

i. Union Bank of India Vs. Paramshakti Steel Ltd. [MA 243/2018 in C.P. No. (IB) 727 (MB)/2017].

The resolution plan did not have mention of Rs.180 crore receivable by the CD in resolution. On instructions from the AA, the RP found that most of the debtors are not in existence. The AA advised the RP “*to initiate all steps which is available under the IB Code to proceed against the promoter/director of this Corporate Debtor by the next date of hearing. Moreover, the RP, in case, require any police assistance or protection, this Bench suggests the respective police authority to assist this RP in unravelling this fraud that has happened in this company.*”.

j. Shailen Shah V/s. Tahsildar Akole District Ahmednagar & Ors. [IA 153 of 2018 in MA 6 of 2018 in C.P. (I.B) No. 14/7/NCLT/AHM/2018].

The RP prayed for a necessary restraint order in respect of the execution of attachment warrant issued by Tehsildar. In view of the moratorium granted under section 14 of the Code, the AA directed status quo in respect of further execution of warrant of attachment issued by Tehsildar for recovery of non-agriculture tax of CD amounting to Rs.1.51 crore.

k. Takkshill Enterprises Vs. IAP Company Private Ltd. [C.A. No. 522 (PB)/2018 in (IB)-446(ND)/2017].

A complaint filed by the IRP was not taken cognisance. The AA directed: *“In the meanwhile, the Deputy Commissioner of Police is directed to issue instructions to Station House Officer of Police Station Palam Vihar, Gurgaon to take cognizance of the complaint filed by the Interim Resolution Professional namely Mr. Dharmendra Kumar. It is appropriate to mention that the Interim Resolution Professional has to perform onerous statutory functions under the provisions of Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In cases the complaint discloses commission of a cognizable offence the Incharge Police Station i.e. Station House Officer is under legal obligation to take cognizance of the complaint as is mandated by Section 190 of Criminal Procedure Code, 1973. The officers to whom the notice is issued shall show cause why no action was taken on the complaint filed by the Interim Resolution Professional on 30.05.2018. It is well settled that if the complaint discloses the commission of a cognizable offence then the case is required to be registered and investigation needs to be carried out.”*

4. IPs are requested to kindly go through the orders for better and complete understanding and update themselves from subsequent orders on the same subject.

Yours faithfully,

- Sd -

(Dilip Arjun Khandale)
Deputy General Manager

To,
(All Insolvency Professionals)