

**Insolvency and Bankruptcy Board of India**  
**7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi-110001**

Facilitation / 002 / 2019

01<sup>st</sup> March, 2019

Dear Sir / Madam,

**Subject: In aid of Insolvency Professionals and Committee of Creditors involved in the Corporate Insolvency Resolution Process.**

The Insolvency Professionals (IPs) and the Committee of Creditors (CoC) constitute key institutions of public faith under the Insolvency and Bankruptcy Code, 2016 (Code). The Code read with Regulations made thereunder has demarcated responsibilities of an IP and of the CoC in the corporate insolvency resolution process (CIRP) and also assigned certain responsibilities to them jointly. The emerging jurisprudence is bringing further clarity about their roles in a CIRP.

2. An IP, when acting as an Interim Resolution Professional or Resolution Professional, is vested with an array of statutory and legal duties and powers. He exercises the powers of the board of directors of the corporate debtor undergoing resolution. He manages operations of the corporate debtor as a going concern, protects the value of its property and complies with applicable laws on its behalf. In fact, he conducts the entire CIRP. The stakeholders are required to co-operate with him in discharge of his functions. In its order dated 16<sup>th</sup> January, 2019 in the matter of Asset Reconstruction Company (India) Pvt. Ltd. Vs. Shivam Water Treaters Pvt. Ltd., the Hon'ble Adjudicating Authority held: “.. RP (Resolution Professional) is acting as an officer of the Court and any hindrance in the working of the CIRP will amount to contempt of court.” In its order dated 18<sup>th</sup> February, 2019 in the same matter, the Hon'ble Adjudicating Authority held: “It is to be clarified that RP is discharging her duties as Court Officer and any non-compliance of the Court Officer will be deemed as Contempt of Court.”.

3. The Code shifts the control of a corporate debtor, when it is admitted into CIRP on its failure to service a debt, to creditors represented by a CoC for resolving its insolvency. The CoC holds the key to the fate of the corporate debtor and its stakeholders. Several actions under the Code require approval of the CoC. It may approve a resolution plan after considering its feasibility and viability. In the judgement dated 5<sup>th</sup> February, 2019 in the matter of K. Sashidhar Vs. Indian Overseas Bank & Ors., the Hon'ble Supreme Court held: “The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors.” It further observed: “Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. .... The legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.”

4. There are certain matters where both the IP and the CoC have defined roles. Various actions under section 28 are taken by the IP only with the prior approval of the CoC. In the judgement cited in Para 3 above, the Hon'ble Supreme Court held: “The CoC is called upon to consider the resolution plan under section 30(4) after it is vetted and verified by RP as being compliant

*with all the statutory requirements specified under section 30(2).” While specifying their roles, the Code does not envisage one assuming the role of the other. In the said judgement, the Hon’ble Supreme Court observed: “The Resolution Professional is not required to express his opinion on matters within the domain of the financial creditors, to approve or reject the resolution plan, under section 30(4) under the I&B Code”.*

5. It is, therefore, necessary that the IP and the CoC have a complete and clear understanding of their roles and responsibilities in a CIRP under the Code. A charter of their responsibilities prepared in consultation with the three insolvency professional agencies is at Annexure for guidance. This charter is only indicative and meant for the sole purpose of educating the stakeholders. A stakeholder must refer to the Code and Rules/Regulations made thereunder or seek professional advice if he intends to take any action or decision in any matter under the Code.

Yours faithfully,  
-Sd-  
(Methil Unnikrishnan)  
General Manager

To  
All Insolvency Professionals and other stakeholders.

Encl.: Annexure as above.

**Charter of Responsibilities of IRP / RP and CoC in a CIRP**

| Phase       | Section          | Regulation  | Responsibility   | Who is responsible? |       | Voting (%) |
|-------------|------------------|---|--|---------------------|-------|------------|
|             |                  |   |  | IRP/RP              | CoC   |            |
| IRP         | 13(2) & 15       | 6(1) & 6(2)   | Making public announcement within 3 days of appointment and calling for submission of claims   | Green               | Red   | NA         |
|             | 17               |   | Management of affairs of the CD, exercise the powers of the Board of Directors of the CD, etc.   | Green               | Red   | NA         |
|             | 17(2)(e)         |   | Compliance with the requirements under any law on behalf of the CD during CIRP   | Green               | Red   | NA         |
|             | 18(1)(a)         |   | Collect all information relating to the assets, liabilities, finances and operations of the CD   | Green               | Red   | NA         |
|             | 18(1)(b)         | 13 & 14   | Receive, collate and verify claims, including best estimate of claims where it is not precise  | Green               | Red   | NA         |
|             | 21(6A) & (b)     | 4A & 16A  | Ascertaining class(es) of creditors, identifying and selecting AR, applying to AA for appointment of AR, provide list of such creditors to AR, provide electronic means of communication between AR and such creditors | Green               | Red   | NA         |
|             | 18(1)(c) & 21(1) | 17(1)   | Constitution of CoC and filing report with the AA  | Green               | Red   | NA         |
|             | 22(1)            | 17(2)   | Holding the first meeting of the CoC within seven days of filing report under regulation 17(1)   | Green               | Red   | NA         |
|             | 22               | 17(3)   | Carrying on as RP from 40 <sup>th</sup> day till RP is appointed   | Green               | Red   | NA         |
|             | 18(1)(e)         |   | Filing information with information utility  | Green               | Red   | NA         |
|             | 18(1)(d) & (f)   |   | Monitor the assets of CD, manage its operations, take control and custody of its assets  | Green               | Red   | NA         |
|             | 19(2)            |   | Make application to the AA, in case of non-cooperation from CD, its promoter or any other person required to assist or cooperate with IRP  | Green               | Red   | NA         |
|             | 20(1) & 20(2)(e) |   | Protect and preserve the value of property of the CD and manage its operations as a going concern  | Green               | Red   | NA         |
|             | 20(2)(a)         |   | Appoint accountants, legal or other professionals, as may be necessary   | Green               | Red   | NA         |
|             | 20(2)(b)         |   | Enter into contracts on behalf of CD or amend contracts entered into before commencement of CIRP   | Green               | Red   | NA         |
|             | 20(2)(c)         |   | Raise interim finance (within the limits set by CoC)   | Green               | Red   | NA         |
|             | 20(2)(d)         |   | Issue instruction to personnel of the CD for keeping it as a going concern   | Green               | Red   | NA         |
|             | 21(10)           |   | Make financial information available to CoC within seven days of such requisition under section 21(9)  | Green               | Red   | NA         |
|             | 22(2)            |   | Confirmation of IRP as RP or replacement with another IP as RP   | Red                 | Green | 66         |
|             | 22(3)(b)         |   | File application with the AA for replacement of IRP with proposed RP   | Red                 | Green | NA         |
| 23(3)       |                  | Providing all information, documents and records pertaining to CD to RP | Green  | Red                 | NA    |            |
| 12A         | 30A              | Filing of withdrawal application before the AA                          | Blue   | Blue                | 90    |            |
| 240(1)      | 33               | Ratifying the expenses of IRP   | Red  | Green               | 51    |            |
| 18(1)(g)    | 34A*             | Disclosure of insolvency resolution process costs                       | Green  | Red                 | NA    |            |
| 208 (2) (e) | 39A              | Preservation of records relating to CIRP of CD                          | Green  | Red                 | NA    |            |

| Phase    | Section               | Regulation  | Responsibility  | Who is responsible? |       | Voting (%) |
|----------|-----------------------|---|---|---------------------|-------|------------|
|          |                       |   |   | IRP/RP              | CoC   |            |
| RP       | 23(1)                 |   | Conduct of the CIRP in compliance with the procedure under the Code and Regulations   | Green               | Red   | NA         |
|          | 23(2) r/w 17          |   | Management of affairs of CD, exercise the powers of the Board of Directors of CD, etc.  | Green               | Red   | NA         |
|          | 23(2) r/w 17(2)(e)    |   | Compliance of the requirements under any law on the behalf of CD during CIRP  | Green               | Red   | NA         |
|          | 24(8)                 | 22(1)   | Modifying percentage of voting rights required for quorum   | Red                 | Green | 51         |
|          | 24 & 25(2)(f)         | 23 - 26   | Convene, attend and conduct of meetings of CoC, including participation through video conferencing and voting through electronic means                  | Green               | Red   | NA         |
|          | 24 & 25(2)(f)         | 18  | Convene meetings of CoC whenever required or on request made by members of CoC representing 33% of voting rights  | Green               | Red   | NA         |
|          | 24 & 25(2)(f)         | 19(2)   | Reduction of notice period for holding CoC meeting  | Red                 | Green | 51         |
|          | 25(1)                 |   | Preserve and protect the assets of the CD including continued business operations of CD   | Green               | Red   | NA         |
|          | 25(2)(a)              |   | Take control and custody of all assets of CD  | Green               | Red   | NA         |
|          | 25(2)(b)              |   | Represent and act on behalf of the CD with third parties, exercise rights for the benefit of CD in judicial, quasi-judicial and arbitration proceedings | Green               | Red   | NA         |
|          | 25(2)(c) & 28(1)(a)   |   | Approval to raise interim finance   | Blue                | Blue  | 66         |
|          | 25(2)(d)              |   | Appoint accountants, legal or other professionals   | Green               | Red   | NA         |
|          | 25(2)(e)              | 13 & 14   | Maintain updated list of claims, including verification and determination   | Green               | Red   | NA         |
|          | 25(2)(g) & 29(1)      | 36(1)   | Preparation and circulation of IM to CoC  | Green               | Red   | NA         |
|          | 240(1)                | 36(3)   | Providing information having a bearing on the Resolution Plan, upon request from a member of the CoC  | Green               | Red   | NA         |
|          | 29(2)                 | 36(4)   | Obtaining confidentiality undertaking from prospective RAs and CoC  | Green               | Red   | NA         |
|          | 25(2)(h)              | 36A(1)-(3)  | Publishing of invitation for EOI from prospective RAs   | Green               | Red   | NA         |
|          | 25(2)(h)              | 36A(4)(a)   | Specifying criteria for prospective RAs   | Red                 | Green | 51         |
|          | 25(2)(k)              | 36A(8) & (9)  | Due diligence of EOIs received to assess compliance with criteria specified including seeking clarification/additional information                      | Green               | Red   | NA         |
|          | 25(2)(k)              | 36A(10)   | Issue provisional list of eligible prospective RAs  | Green               | Red   | NA         |
|          | 25(2)(k)              | 36A(12)   | Issue final list of eligible prospective RAs  | Green               | Red   | NA         |
|          | 25(2)(g) & (h) r/w 29 | 36B(1)-(5)  | Issue of IM, EM and RFRP (including performance security requirements)  | Green               | Red   | NA         |
|          | 25(2)(h)              | 36B r/w 2(ha)   | Details/parameters of EM and RFRP   | Blue                | Blue  | 51         |
|          | 25(2)(k)              | 36B(6)  | Extend the timeline for submission of Resolution Plans  | Blue                | Blue  | 51         |
|          | 25(2)(k)              | 36B(7)  | Re-issue of RFRPs   | Blue                | Blue  | 51         |
|          | 25(2)(i)              | 37,38 & 39  | Present all Resolution Plans which fulfill required criteria at the meeting of CoC  | Green               | Red   | NA         |
|          | 25(2)(j)              |   | File application for avoidance of transactions  | Green               | Red   | NA         |
| 27       |                       | Replacement of RP                                     | Red   | Green               | 66    |            |
| 28(1)(b) |                       | Creation of security interest over assets of CD       | Blue  | Blue                | 66    |            |
| 28(1)(c) |                       | Change the capital structure of CD                    | Blue  | Blue                | 66    |            |
| 28(1)(d) |                       | Record any change in the ownership interest of the CD | Blue  | Blue                | 66    |            |

| Phase  | Section                 | Regulation   | Responsibility   | Who is responsible? |     | Voting (%) |
|--------|-------------------------|--|--|---------------------|-----|------------|
|        |                         |  |  | IRP/RP              | CoC |            |
| RP     | 28(1)(e)                |  | Payment limits from bank accounts of CD  |                     |     | 66         |
|        | 28(1)(f)                |  | Undertake any related party transaction  |                     |     | 66         |
|        | 28(1)(g)                |  | Amend any constitutional documents of the CD   |                     |     | 66         |
|        | 28(1)(h)                |  | Delegate its authority to any other person   |                     |     | 66         |
|        | 28(1)(i)                |  | Dispose of or permit the disposal of shares of any shareholder of the CD or their nominees to third parties  |                     |     | 66         |
|        | 28(1)(j)                |  | Make any change in the management of the CD or its subsidiary  |                     |     | 66         |
|        | 28(1)(k)                |  | Transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business   |                     |     | 66         |
|        | 28(1)(l)                |  | Make changes in the appointment or terms of contract of such personnel as may be specified by the CoC  |                     |     | 66         |
|        | 28(1)(m)                |  | Make changes in the appointment or terms of contract of statutory auditors or internal auditors of the CD  |                     |     | 66         |
|        | 25(2)(d)                | 27   | Appointment of Registered Valuers  |                     |     | NA         |
|        | 24(8)                   | 28   | Notifying each participant of CoC and AA of any change in CoC consequent to assignment or transfer of debt by a creditor   |                     |     | NA         |
|        | 28(1)(k)                | 29   | Sale of assets outside the ordinary course of business   |                     |     | 66         |
|        | 19                      | 30   | Applying to the AA seeking assistance of local district administration   |                     |     | NA         |
|        | 12A                     | 30A  | Filing of withdrawal application before the AA   |                     |     | 90         |
|        | 240(1)                  | 34   | Fixing of expenses of RP   |                     |     | 51         |
|        | 25(2)(k)                | 34A*   | Disclosure of insolvency resolution process costs  |                     |     | NA         |
|        | 25(2)(j), 43,45, 50, 66 | 35A  | (i) Determination of transactions of the nature of preferential, undervalued, extortionate, fraudulent trading or wrongful trading; (ii) intimation to the IBBI; and (iii) applying to the AA for appropriate relief |                     |     | NA         |
|        | 30(2) & (3)             | 38 & 39(2)   | Submission of compliant resolution plans to CoC (mandatory contents including details of previous non implementation, if any, of Resolution Plan by RAs) along with details of irregular transactions (if any)       |                     |     | NA         |
|        | 30(4)                   | 39(3)  | Evaluation (strictly as per EM) and approval of Resolution Plan with modifications (if any), with reasons recorded for approval or rejection   |                     |     | 66         |
|        | 30(6)                   | 39(4)  | Submission of Resolution Plan approved by CoC to AA along with compliance certificate in Form H and the evidence of receipt of performance security  |                     |     | NA         |
|        | 23(1) Proviso           |  | Continuing to manage the operation of CD until the order is passed by the AA under section 31  |                     |     | NA         |
|        | 240                     | 39(5)  | Communicating order of the AA on Resolution Plan to participants and RAs   |                     |     | NA         |
|        | 208(2)(e)               | 39A  | Preservation of record relating to CIRP of CD  |                     |     | NA         |
| 12 (2) | 40                      | Application to the AA for extension of CIRP period |  |                     | 66  |            |

| Phase  | Section | Regulation   | Responsibility  | Who is responsible? |     | Voting (%) |
|--------|---------|--|---|---------------------|-----|------------|
|        |         |  |   | IRP/RP              | CoC |            |
| IRP/RP | 208(2)  | 7(2)(h) r/w First Schedule of IP Regulations         | Abide by the code of conduct  |                     |     | NA         |
|        | 208(2)  | Items - 8 & 8A of First Schedule of IP Regulations** | Disclosure of pecuniary or personal relationship with stakeholders or association with FC |                     |     | NA         |

\* Read with Circular No. IBBI/IP/013/2018 dated 12th June, 2018 issued by IBBI

\*\* Read with Circular No. IP/005/2018 dated 16th January, 2018 issued by IBBI

**Legend:**

|  |   |
|--|---|
|  | Responsibility  |
|  | Authority of IRP/RP, as the case may be, with the approval of CoC |
|  | No role   |

**Abbreviations**

|                |   |
|----------------|---|
| AR             | Authorised Representative                         |
| CD             | Corporate Debtor                                  |
| CIRP           | Corporate Insolvency Resolution Process           |
| CoC            | Committee of Creditors                            |
| EM             | Evaluation Matrix                                 |
| EOI            | Expression of Interest                            |
| FC             | Financial Creditor                                |
| IBBI           | Insolvency and Bankruptcy Board of India          |
| IM             | Information Memorandum                            |
| IP Regulations | IBBI (Insolvency Professionals) Regulations, 2016 |
| IRP            | Interim Resolution Professional                   |
| NA             | Not Applicable                                    |
| RA             | Resolution Applicant                              |
| RFRP           | Request for Resolution Plan                       |
| RP             | Resolution Professional                           |

**Note**

Section means a section of the Insolvency and Bankruptcy Code, 2016

Regulation means the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 unless specified otherwise.