

Discussion Paper on Remuneration of an Insolvency Professional

This paper deals with issue of fee of an insolvency professional (IP) acting as interim resolution professional (IRP)/ resolution professional (RP) in corporate insolvency resolution process (CIRP) who have significant role in ensuring timely completion of the CIRP in addition to the indispensable role played by each stakeholder including the Adjudicating Authority (AA), the committee of creditors (CoC), resolution applicants, etc. To this end, the paper suggests changes to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).

Background

2.The Board has been receiving several directions from the AA, requiring it to fix of fee payable to IRP/ RP in cases *inter-alia* involving disputes between IRP and applicant regarding fee, and disputes between RP and CoC regarding fee/ exorbitant fees claimed as interim resolution process cost (IRPC). The Board has dealt with the references from the AA in the matters on facts and circumstances of each case.

3. In majority of such cases, the Board has constituted Expert Committees comprising of 3 members including two market experts and one officer of IBBI in order to ensure necessary compliance with directions of AA for each case. The respective committees considered the facts of the particular case viz. nature and state of affairs of business activity in which Corporate Debtor (CD) is engaged, and in general noted the volume of activities carried out by IP, apart from the information about taxable remuneration of the highest paid unrelated employee of CD, wherever available. Accordingly, the quantum of fees and expenses so recommended as reasonable, by the committees were considered, and thereafter IBBI submitted the same to AA.

4. AA through its various orders also suggested the Board to consider issuing guidelines / tabulate a reasonable fee structure. Few such directions are reproduced in Table 1 below:

Table 1: Directions from Hon’ble AA – Fee Fixation Matters

Date of the Order	Case Details (AA)	Direction
March 13, 2018	Punjab National Bank Vs. Divya Jyoti Sponge Iron Pvt. Ltd. (Kolkata Bench)	<i>“...In the said background of fixation of cost of resolution and fees of RP it appears to me that it is time to have a legitimate guidelines or regulation in this regards so as to safeguard and to ensure the prospects of revival of a dying corporate debtor not be at a highest cost which cannot be affordable by the corporate debtor. <u>Hopefully IBBI would consider the above said factors and would frame necessary regulations or guidelines in regards fixation of fees and resolution cost by a resolution professional.</u>”</i>
May 14, 2019	ICICI Bank Ltd. Vs. Gitanjali Gems Ltd (Mumbai Bench)	<i>“...As a consequence, <u>this Bench is of the opinion that a guideline can be obtained from IBBI, New Delhi that whether any Regulation or any notification about the fixation of remuneration of RP has been issued</u> as a guiding factor...”</i>
July 17, 2019	M/s. Ayam Weldmesh Pvt. Ltd. Vs. M/s. Nice Projects Ltd (New Delhi Bench)	<i>“...<u>It is also considered expedient if IBBI could propose and tabulate a reasonable fee structure as reimbursements of fees</u> are often in dispute...”</i>
February 4, 2022	Variscon Engineering Services	<i>“we have observed that the issue of payment of IRP/ RP/ Liquidator fees and CIPR/Liquidator Cost along with the</i>

	Pvt. Ltd. Vs. Pier-One Constructions Pvt. Ltd (New Delhi Bench)	<p><i>submission of the CoC members or the stakeholders comes up for hearing in a regular manner which consumes not only the time of Adjudicating Authority but also adversely impacts conduct of CIRP, hence, it is high time that some guidelines be issued by IBBI...</i></p> <p><i><u>It is hoped that IBBI would frame necessary guidelines at the earliest</u> to resolve these issues for which various applications pending before the NCLT Benches and, therefore, the same could be disposed of on merits or otherwise be withdrawn by the parties if a settlement arise between them upon consideration of such guidelines.</i></p>
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5. The Board is also in receipt of representation from a leading bank highlighting practical challenges encountered on the issue of fees of IRP/RP in CIRP. In the representation, it submitted –

“..We have been seeing many instances of delayed payment of fees and CIRP expenses by CoC members. While we have issued suitable guidelines to our branches for avoiding such delays, we suggest that IBBI may issue suitable circular, instructions or amend regulations to provide for CIRP cost estimate by RP and upfront funding of reasonable CIRP costs by CoC members through an escrow account to cover CIRP costs/RP fees (like provision for liquidation costs).

We have also seen that while quoting fees, some IPs quote a very low fee to get CIRP assigned and then add considerable miscellaneous expenses by way of advisors/support staff to inflate their dues. We suggest that IBBI may issue clear directions on fees and may even consider a suggestive table of fees chargeable including a minimum fee to discourage unhealthy competition among IPs to get CIRP assignments and then adopt unscrupulous means to cover their losses.”

Statement of Problem

6. The Insolvency and Bankruptcy Code, 2016 (Code) read with regulations made thereunder deals with the issue of remuneration of an IP. For instance, the insolvency resolution process cost (IRPC) under section 5(13) of the Code includes ‘the fees payable to any person acting as a resolution professional’. It also includes any other cost as may be specified by the Board. Regulation 31 of the CIRP Regulations defines IRPC to include ‘expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33’ and ‘expenses incurred on or by the resolution professional fixed under Regulation 34’. Explanations to Regulations 33 and 34 clarify that such ‘expenses’ shall include fee to be paid to IRP/RP engaged. Further, IRPC is required to be paid in priority both in case of resolution [Section 30 (2)(a)] and liquidation [Section 53(1)(a)].

7. Unlike fees of liquidator, the Board has not specified an indicative table of fees linked to any parameter, which would determine the fees payable to IRP/RP in CIRP. The fiduciary duties of fixation of remuneration of IP acting as an IRP/RP in CIRP, lies with applicant¹, the AA² or CoC³, as the case may be.

8. However, the Board has, through the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations), and circulars⁴ provided guidance in the matter of fixation of remuneration of IP and other professionals appointed by him. It broadly provides that the fees and costs charged by an IP must be transparent and a reasonable reflection of the work necessarily and properly undertaken.

¹ Regulation 33(1) of CIRP Regulations, 2016.

² Regulation 33(2) of CIRP Regulations, 2016.

³ Regulation 34 of CIRP Regulations, 2016.

⁴ IBBI circulars dated January 16, 2018 and June 12, 2018.

9. While it is expected that market would determine the fees and expenses on an IP, in a particular case, it has thus been observed that AA is often burdened with the issue of fixation of remuneration of an IP given the failure of applicant or CoC, to do so. Such a situation is undesirable, yet avoidable.

10. It is also pertinent to note that Hon’ble National Company Law Appellate Tribunal (NCLAT) in the matter of Sumit Bansal, Insolvency Professional Vs. Committee of Creditors of JP Engineers Pvt. Ltd. & Ors. [Comp. App. (AT) (Ins.) No. 160 of 2022] held that –

“10. We thus are of the view that IBBI is fully clothed with jurisdiction to regulate payment of remuneration of RP and IRP both by framing regulation or by issuing executive instructions till regulation are not framed can regulate the subject. We thus are of the view that IBBI till necessary regulations are not framed regulating fee is empowered to issue executive instructions in this regard. The issue of payment of fee to the IRP/RP occur very frequently which needs to be regulated by Regulating Authority who is clothed with the power. The recommendations may be helpful to determine the issue in accordance with guidelines and circulars issued by the IBBI in this respect, if any.”

11. Keeping in view of the directions of the AA and Appellate Authority as received from time to time, the Board has, in the interim, also laid down internal guidelines for dealing with such specific directions in relation to fixing fee of an IP and/or expenses incurred on or by him in conduct of a CIRP.

12. Considering the directions of AA and Appellate Tribunal as mentioned above, the concerns raised by a leading bank on the cost escalations post initial engagement sought by IPs at lower quotes, and to reduce the avoidable litigations regarding the fixation of fees of IP in CIRP, it is considered expedient to specify model fee structure. Also, there is a need to nudge IPs, for facilitating timely resolution and value maximisation, through their efficient performance and conduct.

13. In the aforesaid background, this paper covers the following issues: -

- **Issue I:** Components of fee of an IP in CIRP i.e.,
 - (a) Fixed Fee Structure and
 - (b) Performance-linked Incentive Fee.
 - (i) for timely resolution
 - (ii) for value maximisation
- **Issue II:** Having an escrow account mechanism for payment of fee to the IP.

Issue-I: Components of fee of an IP in CIRP

(a) Fixed Fee Structure

14. It is proposed that the fixed fee structure, as given at Table 2 below, be considered as reasonable fee of an IP acting as IRP/RP, in CIRP for the period from his appointment till submission of CoC approved resolution plan before AA. This would be the minimum (floor) fees payable to the IP, and applicants/CoC shall remain free to consider higher amount of fees for IP, depending on the merits of the case.

Table 2: Fee of IP in CIRP –Fixed Fee (Minimum) Per Month

Quantum of Claims Admitted	^Fee (Rs. Lakh)
(i) <= Rs. 50 crore	1.50
(ii) > Rs.50 crore <= Rs.100 crore	2.00
(iii) > Rs.100 crore <= Rs.500 crore	2.50
(iv) > Rs.500 crore <= Rs.1,000 crore	3.00
(v) > Rs.1,000 crore <= Rs.2,500 crore	3.50
(vi) > Rs.2,500 crore <= Rs.10,000 crore	5.00
(vii) > Rs.10,000 crore	7.50

^Payable from his appointment till submission of CoC approved resolution plan to AA. CoC may also decide fee of an IP for period from submission of CoC approved resolution plan to AA till approval of the resolution plan by the AA or passing of an order for liquidation by AA.

(b): Performance-linked Incentive Fee

Statement of Problem

15. The Code envisages resolution of the CD as a going concern, as closure of the CD destroys organisational capital and renders resources idle till reallocation to alternate uses. Keeping this in view, the Code has made available a cadre of competent and empowered IPs to facilitate early resolution. Code also stipulates strict timelines for resolution.

16. Section 12 of the Code provides that the resolution process of a corporate debtor must be completed within 330 days from the insolvency commencement date. The said 330 days period includes the following

- (a) Normal CIRP period of 180 days.
- (b) Extension of such period (only once) to 90 days granted by AA, and
- (c) Time taken for legal proceedings with respect to resolution process of the CD.

17. In case the resolution professional fails to submit the resolution plan within the prescribed time period of 180 days or 330 days (including the extension granted under the section), the AA has the right to initiate liquidation process. Initiation of liquidation process may result in winding up of the company. Serious consequences shall be followed if the resolution process is not completed within the prescribed time period; therefore, it is critical to ensure timely completion of the process. Time thus is the essence of the Code and IP thus must adhere to the timelines and facilitate time-bound process as envisaged under the Code read with regulations made thereunder.

18. It is pertinent to note that since the coming into force of the provisions of CIRP, 5258 CIRPs have commenced by end of March 2022 out of which 3406 CIRP have been closed. Of the CIRPs closed, 480 (14%) have ended in approval of resolution plans, 1609 (47%) have ended in orders for liquidation, while remaining 1317 (39%) have been closed on appeal/review/settled/withdrawn. This clearly shows that the number of cases being liquidated are three times more than the number of cases being resolved. Also, data indicate that as at the end of March 2022, 66% of the ongoing CIRPs had crossed timeline of 270 days, 9% CIRPs were running in the timeline range from more 180 days but less than 270 days.

19. Analysis of data of 306 resolved CIRPs (as given in table 3 below), from the filings made before the IBBI by the IPs, shows that in 300 cases (representing 98% of said resolved cases) there were delays on the part of IP in submission of CoC approved resolution plan to AA as against the stipulated time-lines of upto 165 days from ICD as specified vide regulation 39(4) of CIRP Regulations read with regulation 40A of CIRP Regulations.

Table 3: Submission of CoC approved resolution plans to AA

Timelines	Number of Days	% of cases
<= 165 days	6	2%
> 165 days <= 180 days	10	3%
> 180 days <= 270 days	81	26%
> 270 days <= 330 days	77	25%
> 330 days	132	43%
Total	306	100%

20. Thus, delays are being encountered in majority of cases owing to multiple factors including delay on the part of IPs in submission of CoC approved resolution plans to AA. Such delays result in erosion of value of assets of CD and undermine achievement of value maximisation objective of the Code.

21. Analysis of data of aforesaid data of 306 resolved CIRPs (as given in table 4 below), also indicate that in only 116 cases (representing 38% of resolved cases), the realisable value was greater than the fair value.

Table 4: Value maximisation achieved in resolved cases

Timelines	Number of Cases	% of cases
Realisable value <= Fair Value	190	62%
Realisable value > Fair Value	116	38%
Total	306	100%

22. Code is the rescue mechanism (not a recovery tool) which envisages maximization of value of assets of CD. Maximisation of value does not mean maximum recovery from the assets during the process of liquidation. It is a concept which helps CD to get a fair valuation in return. The aforesaid analysis indicates in majority of cases the realisable value remains lower than the fair value, which calls for greater involvement of IPs in facilitating value maximization.

23. Keeping in mind the aforesaid, a need is felt that in addition to being adequately remunerated for his services, an IP may also be incentivized to channelise his efforts to ensure that (i) CD is resolved within the prescribed timelines and is able to achieve (ii) value maximisation of the CD.

[i] Performance-linked fee structure for timely resolution

Proposal

24. It is proposed that the variable fee structure as given in table 5 below, be considered as reasonable for IP who has completed CIRP on time.

Table 5: Performance Linked fee structure for timely completion of CIRP

Timelines	Fee as % of actual realisable value*
(i) <= 180 days	1.00
(ii) > 180 days <= 270 days	0.75
(iii) > 270 days <= 330 days	0.50
(iv) > 330 days	0.00

^^Covering the period from Commencement of CIRP and appointment of IRP [u/s 16(1) of the Code] till submission of CoC approved Resolution Plan to AA [under regulation 39(4) of CIRP Regulations]

*Subject to maximum amount not exceeding to Rs.5 crore, and actual payment to be made only upon approval of resolution plan by AA [u/s 31(1) of the Code].

Illustration-

Upon resolution of CD having actual realisable value amounting to Rs.1,000 crore within a period of 180 days, IP acting as RP shall receive Rs.5 crores (calculated at 1% of Rs.1,000 crore, subject to cap of Rs. 5 crore) as variable fee. This variable fee amount will be included as IRPC.

[ii] Performance-linked fee structure relating to Value Maximization

Proposal

25. It is proposed that variable fee calculated at the rate of **1% of the positive difference between the actual realisable value and fair value** subject to maximum amount not exceeding to Rs.5 crore, be considered as reasonable amount for incentivising IPs who have facilitated the value maximisation. However, said performance-linked fee is indicative in nature, and CoC may devise any other incentive structure, or it may decide not to give such incentive.

Issue-II: Escrow Account Mechanism

26. As mentioned earlier, the fiduciary duties of fixation of fee of IP lies with applicant / CoC. Similarly, in addition to fixation of fees, the applicant/CoC, being the beneficiaries of the services of IP are also bound to ensure that amounts payable to IP are in fact paid. It therefore becomes necessary to provide for an escrow account mechanism to ensure certainty of payment of fees to IP.

27. IP shall in the first meeting of CoC give estimate of fixed fee and expenditure on hiring of other professionals / support service etc. to the CoC. For the said estimate of fees and expenses pertaining to the first six months period, CoC shall either contribute to an escrow account or obtain the interim finance, towards the same.

Domestic Scenario

28. **The Institute of Chartered Accountants of India (ICAI):** The Committee for Members in Practice (CMP) of ICAI has initiated the ‘Revised Minimum Recommended Scale of Fees’⁵ for the professional assignments done by the members of ICAI. The fee has been recommended separately for Class A, Class B and Class C cities.

29. **The Institute of Company Secretaries of India (ICSI):** The ICSI has issued guidance on scale of fees for professional services⁶ to ensure transparency between the client and the practicing company secretaries and also pave the way for a just and reasonable scale of fees to be charged by professionals on the basis of their experience, expertise, exposure, operational costs, associated risks, penalties for wrong certification and the market forces.

30. **The Institute of Cost Accountants of India (ICAI(Cost)):** The ICAI (Cost) has also laid down suggested minimum recommended scale of fees⁷ for the professional assignments done by cost accountants.

31. **Legal Profession** - As part of the ‘Middle Income Group Scheme’, a schedule of fee for Advocate on Record / Advocates⁸ has been laid down by the Hon’ble Supreme Court.

International Scenario

32. The insolvency framework prevalent in other jurisdictions vary. For instance, while the US follows a ‘debtor in possession’ model, in India the model followed under the Code is ‘creditor in control’. Accordingly, there are differences in the roles and responsibilities of the insolvency professional in those jurisdictions and in India. Nevertheless, an international perspective of the parameters for determination of the fee payable to trustee, administrator, liquidator in some of those jurisdictions may be relevant.

- **Canada:** The remuneration of the trustee (insolvency professional) is normally fixed by the creditors in its meeting through an ordinary resolution. Where the remuneration of the trustee is not so fixed by the creditors, the insolvency law fixes a cap for maximum amount of remuneration allowed to him, which is set as 7½ per cent of the amount remaining out of the realization of the property of the debtor after the claims of the secured creditors have been paid. The court has the authority to increase or reduce the amount of remuneration, on an application made to it [Section 39 Bankruptcy and Insolvency Act, 1985].
- **USA:** The United States Bankruptcy Code: In a case under chapter 7 or 11, the Court may allow reasonable compensation to trustee (insolvency professional) subject to a ceiling linked to varied percentages of the moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims [Section 326].

⁵ ICAI-Revised Minimum Recommended Scale of Fees [<https://www.icai.org/post/committee-for-members-in-practice/>]

⁶ ICSI – Guidance on scale of fees

[https://www.icsi.edu/media/webmodules/ICSI_GUIDANCE_ON_SCALE_OF_FEES_FOR_PROFESSIONAL_SERVICES_2020.pdf]

⁷ ICAI(Cost) – Suggested recommended scale of fees [https://icmai.in/upload/pd/Scale_of_Fees.pdf]

⁸ Hon’ble Supreme Court – Schedule of Fee for Advocates [<https://main.sci.gov.in/legal-aid/>]

- **United Kingdom:** The Insolvency (England and Wales) Rules 2016: The remuneration of an administrator, liquidator or trustee in bankruptcy (insolvency professional) is fixed on the basis of one or a combination of various bases like as a percentage of the value of the property which are realized, distributed etc., or by reference to the time given in attending to matters, or fixed amount [Rule 18.16]. Where a set fee is requested, it has to be explained how the set fee has been calculated to justify the creditors about the fairness and reasonableness of the amount. A procedure has also been provided whereby the administrator, liquidator or trustee can seek an increase in the remuneration [Rule 18.24 & 18.25].

Proposed Amendments:

33. It is proposed to amend CIRP Regulations to provide for –

- (a) minimum fixed (floor) fee of IP in CIRP,
- (b) performance-linked incentive fee for (i) timely completion of CIRP, and (ii) value maximization subject to the condition that –
 - such fee to be duly approved by CoC,
 - higher of the amounts payable under (i) and (ii) shall be considered for arriving at such fee, and
 - such fee shall not exceed Rs.5 crore at any point of time.
- (c) escrow account mechanism for payment of fees to IP.

Economic analysis

34. The fixed fee structures (with floor fee) for IPs would help avoid disputes between the parties and save considerable time of parties involved as well as AA in dealing with litigations in relation to fees payable to IP. It will ensure certain minimum amount of payment of fees to the IP for the services rendered by him. Also, incentivisation of IPs would help achieve the core objectives of the Code such as timely resolution and value maximisation. Further, the escrow account mechanism would also help eliminate uncertainty of payment of fees to IP.

35. **Public comments:** The Board accordingly solicits comments on the proposals discussed above and the draft regulations placed in the **Annexure**. This is issued in pursuance to regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. After considering the comments, the Board proposes to make regulations under clauses (aa) and (t) of subsection (1) of section 196 of the Code.

36. **Submission of comments:** Comments may be submitted electronically by 30th June, 2022. For providing comments, please follow the process as under:

- i. Visit IBBI website, www.ibbi.gov.in;
- ii. Select ‘Public Comments’;
- iii. Select ‘Discussion paper – Remuneration of IP’
- iv. Provide your Name, and Email ID;
- v. 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.
- vi. Select the kind of comments you wish to make, namely,
 - a) General Comments; or

- b) Specific Comments.
- vii. If you have selected 'General Comments', please select one of the following options:
 - a) Inconsistency, if any, between the provisions within the regulations (intra regulations);
 - b) Inconsistency, if any, between the provisions in different regulations (inter regulations);
 - c) Inconsistency, if any, between the provisions in the regulations with those in the rules;
 - d) Inconsistency, if any, between the provisions in the regulations with those in the Code;
 - e) Inconsistency, if any, between the provisions in the regulations with those in any other law;
 - f) Any difficulty in implementation of any of the provisions in the regulations;
 - g) Any provision that should have been provided in the regulations, but has not been provided; or
 - h) Any provision that has been provided in the regulations but should not have been provided.And then write comments under the selected option.
- viii. If you have selected 'Specific Comments', please select para/regulation number and then sub-para/sub-regulation number and write comments under the selected para/sub-para or regulation/sub-regulation number.
- ix. You can make comments on more than one para/sub-para, by clicking on **More Comments** and repeating the process outlined above from point 36 (vi) onwards.
- x. Click 'Submit' if you have no more comments to make.

**THE GAZETTE OF INDIA
EXTRAORDINARY
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INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

NOTIFICATION

New Delhi, the ---- June, 2022

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022

No. IBBI/2022-23/GN/REG---- In exercise of the powers conferred by clauses (aa) and (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely: -

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022.
(2) They shall come into force on the date of publication in the Official Gazette.
2. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), in regulation 3, in sub-regulation (1A); in regulation 4A, in sub-regulation (3); in regulation 6, in sub-regulation (2), in clause (a); in regulation 7, in sub-regulation (1); in regulation 8, in sub-regulation (1); in regulation 8A, in sub-regulation (1); in regulation 9, in sub-regulation (1); in regulation 9 in sub-regulation (2); in regulation 9A, in sub-regulation (1); in regulation 30A, in sub-regulation (2); in regulation 36A, in sub-regulation (1); in regulation 36A, in sub-regulation (3); in regulation 39, in sub-regulation (4), for the words “Schedule”, the words “Schedule I”, shall be substituted.
3. In the principal regulations, after regulation 34, following regulation shall be inserted, namely:-
“34A. Fee to be paid to interim resolution professional and resolution professional
(1) The applicant, the Adjudicating Authority and the committee shall fix the fee to be paid to interim resolution professional or the resolution professional, as the case may be, under regulation 33 and 34, respectively, in accordance with the Schedule II.
(2) The committee may ratify an amount higher than the amount fixed under clause (1) of Schedule II, as may be necessary.
(3) An insolvency professional shall submit a statement towards estimate of his fee and fee of the resolution professional in the following manner:
(a) to the applicant immediately on his appointment as an interim resolution professional;
(b) to the committee at its first meeting and thereafter till the appointment of the resolution professional; or
(c) to the committee in the first meeting conducted immediately after his appointment as resolution professional.”

“34B. Escrow Account

- (1) An insolvency professional shall create an escrow account in the name of corporate debtor, in respect of his fee, and fee for the resolution professional, immediately on his appointment as an interim resolution professional.
- (2) The applicant or the committee, as the case may be, shall deposit in the escrow account, or in alternate arrange for interim finance for depositing in the escrow account, the amount fixed under regulation 34A within 72 hours of submission of the statement by the insolvency professional.
- (3) The interim resolution professional or the resolution professional shall be eligible to withdraw the amount deposited in the escrow account towards his fee and shall provide the details of withdrawals to the committee in the statement prepared under regulation 34A.
- (4) The remaining amount, if any, in the escrow account shall be released upon approval of resolution plan under section 31 or passing of an order for liquidation of corporate debtor under section 33.”

4. In the principal regulations, regulation 34 A shall be renamed as 34C.

5. In the principal regulations, after schedule I, the following shall be inserted, namely:-

“Schedule II

(Under Regulation 34A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

1. The interim resolution professional or the resolution professional shall be entitled for fee as per the table below:

Quantum of Claims Admitted	Minimum Fee Per Month (Rs. Lakh)
(i) <= Rs. 50 crore	1.50
(ii) > Rs.50 crore <= Rs.100 crore	2.00
(ii) > Rs.100 crore <= Rs.500 crore	2.50
(iv) > Rs.500 crore <= Rs.1,000 crore	3.00
(v) > Rs.1,000 crore <= Rs.2,500 crore	3.50
(vi) > Rs.2,500 crore <= Rs.10,000 crore	5.00
(vii) > Rs.10,000 crore	7.50

^ Payable from his appointment till submission of CoC approved resolution plan to AA. CoC may also decide fee of an IP for period from submission of CoC approved resolution plan to AA till approval of the resolution plan by the AA or passing of an order for liquidation by AA.

2. The resolution professional may be paid performance linked fee for ensuring timely completion of the corporate insolvency resolution process as per table below:

^^Timelines	Fee as % of Actual Realisable Value*
(i) <= 180 days	1.00
(ii) > 180 days <= 270 days	0.75
(iii) > 270 days <= 330 days	0.50
(iv) > 330 days	0.00

^^Covering the period from commencement of corporate insolvency resolution process and appointment of interim resolution professional under section 16(1) of the Code till submission

of resolution plan approved by the committee to the Adjudicating Authority under regulation 39(4).

**Subject to maximum amount not exceeding to Rs.5 crore, and actual payment to be made only upon approval of resolution plan by AA [u/s 31(1) of the Code].*

Illustration-

Upon resolution of corporate debtor having actual realisable value amounting to Rs.1,000 crore within a period of 180 days, insolvency professional acting as resolution professional shall receive Rs.5 crores (calculated at 1% of Rs.1,000 crore, subject to cap of Rs. 5 crore) as variable fee. This variable fee amount will be included as insolvency resolution process cost.

3. The resolution professional may be paid performance linked fee calculated at the rate of 1% of the positive difference between the actual realisable value and fair value subject to maximum amount not exceeding to Rs.5 crore, for ensuring value maximisation of the assets of the corporate debtor. The committee may devise any other incentive structure, or it may decide not to give such incentive.
4. The amount so payable under clause (2) and (3) shall not exceed Rs. 5 crore.”

RAVI MITAL, Chairperson
[ADVT. - _____]

Note: The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 were published vide notification No. IBBI/2016-17/GN/REG004, dated 30th November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 432 on 30th November, 2016 and were last amended by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2022 published vide notification No. IBBI/2021-22/GN/REG080, dated the 9th February, 2022 in the Gazette of India, Extraordinary, Part III, Section 4, No. 82 on 9th February, 2022.