Insolvency and Bankruptcy Board of India

14th August, 2026

Discussion Paper - Guidance to Insolvency Professionals for Due Diligence to Identify Fraudulent or Malicious Initiation of Corporate Insolvency Resolution Process, and Recourse under Sections 60(5) and 65 of the Insolvency and Bankruptcy Code, 2016

Background

1. The Insolvency and Bankruptcy Code, 2016 ("IBC" or "the Code") provides the legal framework for resolution of distressed assets in a time-bound manner. Experience gained through implementation, and feedback received from stakeholders, have underscored the need for continuous review of the regulatory framework, including the identifying and reporting the misuse of the Corporate Insolvency Resolution Process (CIRP).

2. The present paper carries forward the objective of enhancing the integrity of the CIRP, with specific reference to the fraudulent or malicious initiation of CIRP under section 65 of the Code.

3. Section 65(1) of the Code empowers the Adjudicating Authority (AA) to impose penalty where the CIRP has been initiated fraudulently or with malicious intent for any purpose other than the resolution of insolvency, or liquidation, as the case may be. The Board has received information from law-enforcement and other regulatory agencies indicating that the CIRP framework is, in certain cases, being resorted to with malafide intent — inter alia to settle debts outside the ordinary process of recovery, mitigate tax and other statutory liabilities, close or merge companies without regulatory scrutiny, mitigate the effect of pending or anticipated investigations, prosecution and penalties under other statutes, and to monetise or ring-fence assets.

4. IPs, by virtue of their access to the books of account, records and Committee of Creditors (CoC) proceedings of the corporate debtor, occupy a unique position to identify such indicators at the earliest stage of the process. Section 18 of the Code casts a duty on the IP to collect all information relating to the assets, finances and operations of the corporate debtor; section 19(2) empowers the IP to seek directions from the AA where cooperation is not extended by the erstwhile management; section 25(2)(j) read with regulation 35A of the CIRP Regulations, 2016 requires the IP to form an opinion and record a determination on transactions covered under sections 43, 45, 50 and 66 of the Code; section 60(5) vests the AA with jurisdiction to entertain any question of law or fact arising out of or in relation to the CIRP; and section 65(1) empowers the AA to impose penalty for fraudulent or malicious initiation of the CIRP. Clauses 1, 2, 3, 13 and 14 of the Code of Conduct for IPs (First Schedule to the IBBI (Insolvency Professionals) Regulations, 2016) further require an IP to act with integrity, objectivity and diligence, including in representations made before the AA. Read together, these provisions place a non-delegable duty on the IP to examine indicators of fraudulent or malicious initiation of the CIRP and, where warranted, to place the same before the AA.

5. The Board's experience, including references received from law-enforcement and other regulatory agencies, indicates that such indicators are not being consistently examined or escalated by IPs. Such inconsistency has, in certain cases, delayed the invocation of section 65 notwithstanding the presence of discernible indicators of abuse.

6. To strengthen the framework for identifying and addressing potential instances of fraudulent or malicious initiation of the CIRP, IBBI proposes to issue a circular (Annexure A) consolidating the relevant statutory and regulatory provisions bearing on this duty and sets out an illustrative (non-exhaustive) list of indicators that should alert an IP to the possibility of fraudulent or malicious initiation of the CIRP, together with the recourse available under section 60(5) read with section 65 of the Code. The proposed circular is explanatory in nature regarding the scope of an IP's existing statutory duties and is not intended to create any new substantive obligation beyond what already flows from the provisions referred to in paragraph 4 above. It would also promote consistency in the discharge of duties by IPs.

Objective

7. The draft Circular proposed to be issued pursuant to this discussion paper is placed at Annexure A. The objective of this paper is to seek stakeholder comments on the draft Circular at Annexure A.

Invitation for Public Comments

8. The Board invites comments from all stakeholders, including Insolvency Professionals, Insolvency Professional Agencies, Insolvency Professional Entities, members of the Committee of Creditors, resolution applicants, financial and operational creditors, corporate debtors, personal guarantors to corporate debtors, investors, legal practitioners and academics, on the draft Circular placed at Annexure A.

Process for Submission of Public Comments

The comments may be submitted electronically by 24th August, 2026. For providing comments, please follow the process as under:

i. Visit the IBBI website at www.ibbi.gov.in;

ii. Select 'Public Comments';

iii. Select 'Discussion Paper - Guidance to Insolvency Professionals for Due Diligence to Identify Fraudulent or Malicious Initiation of Corporate Insolvency Resolution Process, and Recourse under Sections 60(5) and 65 of the Insolvency and Bankruptcy Code, 2016';

iv. Provide your Name and Email-ID;

v. Select the stakeholder category, namely -

a. Corporate Debtor;

b. Personal Guarantor to a Corporate Debtor;

c. Creditor to a Corporate Debtor;

d. Resolution Applicant;

e. Insolvency Professional;

f. Insolvency Professional Agency;

g. Insolvency Professional Entity;

h. Academics;

i. Investor; or

j. Others.

vi. Write your comments against the relevant paragraph/clause of the draft Circular at Annexure A.

vii. Click 'Submit' if you have no more comments to make.

Annexure – A

DRAFT CIRCULAR

To

All Registered Insolvency Professionals

All Insolvency Professional Entities

All Insolvency Professional Agencies

(By way of circulation on website)

Subject: Due diligence by Insolvency Professionals to identify fraudulent or malicious initiation of Corporate Insolvency Resolution Process, and recourse under Sections 60(5) and 65 of the Insolvency and Bankruptcy Code, 2016

1. Section 65 of the IBC provides for penal action against persons who initiate the Corporate Insolvency Resolution Process (CIRP) with fraudulent or malicious intent. Recently, the Board has received information from law-enforcement and regulatory agencies indicating that the CIRP framework is being misused in a few cases with malafide intent to settle debts, mitigate tax liabilities, close/merge companies without regulatory scrutiny, mitigate investigations, prosecution and penalties under various statutes, monetise and ring fence assets etc. Insolvency Professionals (IPs), given their access to the books, records and CoC proceedings of the corporate debtor, are under a non-delegable duty to examine such indicators and place them before the Adjudicating Authority.

2. The following provisions of the Code and Regulations are particularly relevant in this regard and are brought to the attention of IPs:

   (a) Section 18 - duty to collect all information on the assets, finances and operations of the corporate debtor;

   (b) Section 19(2) - power to seek the AA's directions where cooperation is not extended;

   (c) Section 25(2)(j) of the Code and Regulation 35A of the CIRP Regulations - duty to form an opinion and make determination on transactions covered under Sections 43, 45, 50 and 66;

   (d) Section 60(5) - AA's jurisdiction to entertain any question of law or fact arising in relation to the CIRP;

   (e) Section 65(1) - AA's powers for imposing penalties against fraudulent or malicious initiation of insolvency proceedings;

   (f) Clauses 1, 2, 3, 13 and 14 of the Code of Conduct for IPs - integrity, objectivity and diligence, including before the AA.

3. IPs should remain vigilant to circumstances that may indicate irregularities or potential abuse of the insolvency process. IPs shall particularly be alert to the following indicators (illustrative and not exhaustive) such as:

   (a) corporate debtor with no or negligible operations, revenue or tangible assets, and persistently negative net worth;

   (b) substantial loans, advances or investments to or from related/group entities despite such absence of operations, written off or shown as doubtful/NIL without adequate basis;

   (c) qualified audit opinions or emphasis of matter on recoverability of loans/investments, or on internal-control weaknesses concerning related-party exposures;

   (d) linkage of the corporate debtor or its group to an order or ongoing proceeding of another regulator, enforcement or investigating agency concerning diversion or fraudulent disbursement of funds;

   (e) CIRP initiated by, or debt assigned shortly before initiation to, a single creditor who then dominates the CoC;

   (f) a cluster of corporate debtors with common promoters, addresses, directors, or inter-lending, taken into CIRP within a proximate timeframe with overlapping CoC composition;

   (g) valuers or auditors unable to verify asset classes for want of documents or cooperation;

   (h) minimal competitive participation in the resolution process, or a common resolution applicant recurring across connected corporate debtors;

   (i) realisation to creditors grossly disproportionate to admitted claims, unsupported by a proper valuation exercise.

4. On noticing any of the above or similar indicators, or other circumstances suggesting fraudulent or malicious initiation, the IP shall review the same in detail and form a considered opinion thereon.

5. Where the IP is of the opinion that the insolvency process was initiated fraudulently or with malicious intent for a purpose other than resolution or liquidation, the IP shall file an application before the AA under Section 60(5) read with Section 65 of the Code for suitable directions and penalty, in addition to any application warranted under Sections 43, 45, 50 or 66.

6. This Circular takes effect immediately and applies to all ongoing and future assignments of Insolvency Professionals as IRP/RP under the Code.

[Name]

[Designation]

Insolvency and Bankruptcy Board of India