

CHISEL THE CS – TO BE ACE OF NCLT/NCLAT

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Sequence of topics in this presentation

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- ▣ UNDERSTANDING THE CLIENT & PREPARATION
- ▣ ADDRESSING THE BENCH
- ▣ UNDERSTANDING THE BENCH
- ▣ UNDERSTANDING OTHER COUNSEL
- ▣ PREPARATION FOR THE HEARING
- ▣ ARGUMENT SKILLS
- ▣ ROLE OF CS AS IRP/RP
- ▣ GENERAL POINTS

UNDERSTANDING THE CLIENT & PREPARATION

UNDERSTANDING THE CLIENT & PREPARATION

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- Know the Facts first.
- Understand the client and the needs of the client.
- Be a good Listener.
- Believe the client.
- Examine the clients to know all the facts of the case.
- Match the Documents with the facts narrated.
- Client to be informed about the interpretation of law & about how the law has been settled by courts

HOW TO ADDRESS THE BENCH

HOW TO ADDRESS THE BENCH

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- Bench may be addressed as
 - Your Honour
 - Your Justice
 - Your Lordship/Ladyship
 - Mr. Justice
 - Sir/Madam

UNDERSTANDING THE COURT

UNDERSTANDING THE COURT

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A Good Lawyer knows
the Law.

A Great Lawyer also
Knows the Judge

UNDERSTANDING THE COURT

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- Understand the background of the Judge i.e.,
Technical / Judicial
- Arguments in line with Court's mind
- Arguments should be tailored made.
- To get the questions correctly and reply to the Court
- T O I L vs T O Y L

UNDERSTANDING THE OTHER COUNSEL

UNDERSTANDING THE OTHER COUNSEL

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- Should address the Other Counsel as -
 - ❖ Learned Senior Counsel
 - ❖ Learned Counsel
 - ❖ Learned Friend
 - ❖ Respected Senior
- Should give due respect to the other counsel
- Strength of the Other Counsel
- Confident to Face Seniors
- Not to get carried away by the comments or arguments or criticism, sledging

PREPARATION FOR THE HEARING

PREPARATION FOR THE HEARING

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There are three stages of Hearing for which an Advocate should prepare

- **Moving**
- **Interim Hearing**
- **Final Hearing**

PREPARATION FOR THE HEARING

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MOVING/INTERIM/FINAL

- ❖ Notes for Arguments
- ❖ Mark the Relevant Paras
- ❖ Flag the Relevant Documents
- ❖ Interim Reliefs

PREPARATION FOR THE HEARING

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- ❖ Previous Order Sheets
- ❖ Any change in Situation
- ❖ Case Laws – in particular to check whether the judgment has been upheld or set aside in higher courts

ARGUMENT SKILLS

ARGUMENT SKILLS

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□ OPEN YOUR MOUTH ONLY IF WHAT YOU ARE GOING TO SAY IS MORE BEAUTIFUL THAN SILENCE

□ What

□ When

To Speak

□ How

ARGUMENT SKILLS

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- The words of the tongue should have three gatekeepers. Before words get past the lips –
- 1st Gatekeeper asks “Is this true”
- 2nd Gatekeeper asks “Is it kind”
- 3rd Gatekeeper asks “Is it necessary”.

ARGUMENT SKILLS

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ARGUMENT SKILLS

- ❖ Very Essential Quality. Possible Only When We Are Not Nervous Or Anxious. To Be Confident On Law And Facts.
- ❖ Making Things Simple – Even complicated facts should be simplified and presented
- ❖ Not to get affected by any comments or interruption by other side
- ❖ To ensure that we are in line with the Court's mind
- ❖ To have eye to eye contact with the Judge
- ❖ Body Language

ROLE OF CS AS IRP/RP

**IBBI (Insolvency Professionals)
Regulations, 2016**

Integrity and Objectivity

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- Being honest, straightforward and forthright in all professional relationships.
- Not to misrepresent any facts or situations.
- To ensure that the decisions are made without any bias, conflict of interest, coercion, or undue influence of any party.
- To Build a Chinese Wall - Being an Insider not to acquire, directly or indirectly, any of the assets of the debtor, nor knowingly permit any relative to do so.

Independence and Impartiality

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- To maintain complete independence and should act independent of external influences.
- To disclose the existence of any pecuniary or personal relationship.
- To disclose as to whether he was an employee of or has been in the panel of any financial creditor of the corporate debtor, to the committee of creditors and to the insolvency professional agency of which he is a professional member.
- Shall not influence the decision or the work of the committee of creditors or debtor, or other stakeholders under the Code,
- Not to make any undue or unlawful gains for himself or his related parties, or cause any undue preference for any other persons for undue or unlawful gains and shall not adopt any illegal or improper means to achieve any mala fide objectives.

Professional Competence

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- To upgrade professional knowledge and skills in order to render competent professional service.
- To represent correct facts and correcting misapprehensions.
- Not to conceal any material information or knowingly make a misleading statement to the Board, the Adjudicating Authority or any stakeholder, as applicable.

Timeliness

- To adhere to the time limits prescribed in the Code and the rules, regulations and guidelines there under.
- To carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of duties.
- Not to act with mala fide or be negligent while performing his functions and duties under the Code.

Information management

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- To ensure that all communication to the stakeholders, is made well in advance and in a manner which is simple, clear, and easily understood by the recipients.
- To maintain written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision.
- Not to make any private communication with any of the stakeholders unless required by the Code, rules, regulations and guidelines there under, or orders of the Adjudicating Authority.
- To co-operate and be available for inspections and investigations carried out by the Board, any person authorized by the Board or the insolvency professional agency with which he is enrolled.
- To provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled.

Confidentiality

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- To ensure confidentiality of the information relating to the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times.
- To refrain from accepting too many assignments, if not in a position to devote adequate time to each assignments.
- Not to engage in any employment, except when he has temporarily surrendered his certificate of membership with the insolvency professional agency with which he is registered.

□ Remuneration and costs

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- To provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations.
- To disclose the fee payable, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member.
- Not to accept any fees or charges other than those which are disclosed to and approved by the persons fixing remuneration.
- To disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must Endeavour to ensure that such costs are not unreasonable.

Gifts and hospitality

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- Not to accept gifts or hospitality which undermines or affects his independence as an insolvency professional.
- Not to offer gifts or hospitality or a financial or any other advantage to a public servant or any other person, intending to obtain or retain work for himself, or to obtain or retain an advantage in the conduct of profession for himself.

GENERAL POINTS

GENERAL POINTS

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- Attend the Court Regularly

“Young Lawyers attend the courts not because they have business there, but because they have no business anywhere else - Washington Irving”.

General Points

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- Dress Code
- Wait for the turn
- Confidence
- Communication Skills
- Be a Good Listener

THANK YOU