Role of Resolution Professional

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• Several conflicts arise between the debtor and creditors when the debtor defaults on payments.

• While it is optimal for both parties to negotiate to maximise value, the difference in their objectives lead them to take individual action to protect their investments.
The Code – IBC 2016

• The Code provides legal recourse to both the debtor and the creditor for a calm period where these negotiations can take place in an orderly, non-conflicted manner, managed by a neutral third party professional.

The Insolvency Resolution Process, or IRP, is the period during which viability is assessed in the Code proposed by the Committee."
Key points to focus for the financial creditors:

- Approval or replacement of IRP
- Approve certain actions of IRP/RP
- Submit resolution plan based on information memorandum prepared by the RP
- It is the duty of resolution applicant and not of RP to prepare the Resolution plan; therefore creditors may have to take independent consultant’s help.
- It is advisable that banks constitute a panel of industry experts whose help can be sought during the insolvency resolution process.
Traits for Resolution Professional

Integrity

Stakeholders management

Legal knowledge

Negotiation

Commercial and Business
Public Announcement

• newspaper advertisements within 3 days of his appointment,
• in English and regional language, having wide circulation,
• as well as on website of IBBI and CD.
• It is to be published in the region where registered office, principal office of business and place where material business (in the opinion of IRP) is carried on by CD. [regulation 6]
• Advertisement shall be in Form A of Schedule to the CIRP Regulations. It shall invite claims to be submitted within 14 days from the date of appointment of IRP.
Expenses of PA

• Note: Expense of advertisement do not form part of IRP Cost. Applicant to bear its cost. However, Committee of Creditors may reimburse it, to the extent it ratifies the same.[regulation 6]
Meeting Directors and top management

• Call, meet and Write to Corporate debtor : (IRP shall prepare minutes of the meeting.)
• inform NCLT order and operations to continue
• IRP should identify the assets of the corporate debtor including movable and immovable assets as far as possible. IRP shall also wherever possible take list of assets from the directors of corporate debtor on day 1 in order to ascertain any possible risk or threat to the assets.
• Take list of bank accounts with signatory matrix, take in possession net banking login credentials, cheque books and slip books, back-up of accounts; for investments in securities - physical certificates and demat account details
Disseminate and maintain secrecy

- IRP must take reasonable steps to inform all parties relating to corporate debtor including but not limited to the Board of Directors, Financial Creditors, key Operational Creditors, suppliers, customers, employees, relevant regulatory authorities, bankers of the corporate debtor about the appointment of the IRP and the fact that the corporate debtor is under CIRP.
Approach

• build relation with Corporate Debtor - as objective is to drive for recovery and save business
• while remain firm on your mandate/agenda
• If business is carried on? Nature of business - is it registered with any Regulatory Body like if NBFC with RBI etc.
Legal Knowledge

• IBC 2016
• Companies Act 1956 and 2013
• Tax laws – Income Tax, Stamp Duty, GST
• Sale of Goods Act
• Contract Act
• Negotiable Instruments Act
• RDDB Act and SARFAESI Act
• Limitation Act
• Structure of Courts and jargons
Commercial and Business

• Role of CEO
• Understand payment matrix and internal controls
• Banking and finance
• Understand cash flow
• Group Companies and its structures
• Related Party Transactions
Negotiation

• Corporate Debtor and Financial Creditors
• Key Suppliers and Customers
• Directors and shareholders
• CFO and top management
• Employees and workmen
Stakeholders’ management

• Top Management
• Employees
• Workmen
• Contractors
• Suppliers
• Customers
• Shareholders
• Regulators
Powers and duties of Resolution Professional

• Powers of Board of Directors
  • Suspension of Board
  • Officers and others report to IRP / RP
  • To act and sign for and on behalf of Corporate Debtor

• Asset Protection and maximise value
  • Take control of assets
  • Security, insurance etc.

• Claims - admission and rejection
• Bifurcate admitted claims of creditors – financial, operational and Related Parties
• Preparation of Information Memorandum (IM)
• Running day to day management
• Regulatory compliances
• Constitute Committee of Creditors (COC)
• Convene meetings of COC
• Scrutinise past two years financials
• Supply IM after undertaking of confidentiality obtained
• Receive, Verify and approve/reject Resolution Plans
• Raise interim finance
• Apply to NCLT for non co-operation; avoidance of preferential transactions
Management of Corporate Debtor

- Committee says - "The interim RP is given the power to do all the things that are necessary for the entity to continue as a going concern. This includes taking over the management of the business and the assets of the entity, appointing accountants and legal staff to verify liabilities and assets and issue legal notices if required. The interim RP has the power to raise fresh finances to keep the entity as a going concern. The term of the financing is restricted to the period till the creditors committee is formed. The cost of financing actions of the interim RP will be considered as the cost of the IRP."
Information Memorandum

• Committee says “where the IRP has been triggered by a creditor, the Adjudicator will give the interim RP the responsibility of collecting the information about the entity that is equivalent to the information that would be present in a debtor triggered IRP. This involves getting access to the information, and filing it in a registered IU if required. If the debtor does not respond to the requests for the information, the interim RP can file a complaint with the Adjudicating Authority.”

• Information memorandum requirements as per Reg.36 and keep in mind reg. 36(4)
Fees and cost of Resolution Professional

• Cost of fees and other expenses that may be incurred on or by IRP, shall be fixed by the applicant. Reg. 33 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
Regulation 33. Costs of the interim resolution professional.

(1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.

(2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).

(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

Explanation- For the purposes of this Regulation, “expenses” mean the fee to be paid to the interim resolution professional and other expenses, including the cost of engaging professional advisors, to be incurred by the interim resolution professional.
The draft Insolvency and bankruptcy (liquidation of insolvent corporate persons) regulations 2016 specifies that remuneration of liquidator shall be determined by the Committee of creditors. However where the committee does not determine the remuneration, the Adjudicating Authority shall determine the remuneration of the Liquidator, which shall at the maximum of the below table:

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<tr>
<th>Slab (in INR)</th>
<th>Percentage for first six months</th>
<th>Percentage for 6-12 months</th>
<th>Percentage for 12-24 months</th>
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<tr>
<td>Less than 1 crore</td>
<td>5%</td>
<td>3.75%</td>
<td>2.50%</td>
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<tr>
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