

Role of Company Secretaries in Insolvency Ecosystem

Company Secretaries (CS) sit at the confluence of governance, law, disclosures, and board processes—the very competencies that the Insolvency and Bankruptcy Code, 2016 (IBC) expects from those who administer corporate distress. This article examines the role of Company Secretaries and their scope for growth as Insolvency Professionals. Regulation 5 of IBBI (Insolvency Professionals) Regulations, 2016, which prescribes the qualification and experience requirements for becoming an IP professional, is discussed.



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INTRODUCTION

Company Secretaries bring a unique combination of legal, governance, compliance, process management, documentation, and stakeholder-handling expertise, making them ideally suited for various functions under the Insolvency and Bankruptcy Code, 2016 (IBC) and not just the corporate law & secretarial matters. Whether they operate as Insolvency Professionals (IPs), Process Advisors, Compliance Managers, Liquidators, Valuation Coordinators, or Corporate Governance Specialists, Company Secretary professionals contribute significantly to the quality, transparency, and efficiency of insolvency proceedings.

Company Secretaries (CS) sit at the confluence of governance, law, disclosures and board processes—the very competencies that the Insolvency and Bankruptcy Code, 2016 (IBC) expects from those who administer corporate distress.

The Code's design makes Insolvency Professionals (IPs) the process fiduciaries. Company Secretaries can become IPs by registering with IBBI under Section 207 of the IBC, while their qualifications and examinations are prescribed by IBBI through regulations, especially Regulation 5 of the IBBI (Insolvency Professionals) Regulations, 2016, acting under the Board's power in Section 196(1)(aa) to set eligibility standards.

THE LEGAL DOORWAY: HOW A COMPANY SECRETARY BECOMES AN INSOLVENCY PROFESSIONAL

Section 206 & 207 of the Insolvency and Bankruptcy Code, 2016 (IBC) requires that no person shall render his services as Insolvency Professional (IP) unless enrolled as a member of an Insolvency Professional Agency (IPA) and registered with the Insolvency and Bankruptcy Board of India (IBBI). In other words, the Act itself opens the gate through registration; it does not list the professions by name.

Section 196(1)(aa) empowers IBBI to lay down standards for eligibility and qualifications for insolvency professionals, following which the Board framed the IBBI (Insolvency Professionals) Regulations, 2016.

Regulation 5 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides for "Qualifications and Experience" recognises multiple eligibility routes, including Company Secretaries with at least 10 years' experience, subject to the candidate passing the Limited Insolvency Examination (LIE), completing the Pre-Registration Educational Course (PREC) through an IPA, and fulfilling other onboarding conditions.

Regulation 5: Analysis

The individual:

- (a) has to pass the Limited Insolvency Examination (LIE) within 24 months from the date of application of enrolment as IP with the IPA; and
- (b) has to complete the pre-registration educational course (PREC) within 12 months from the date of payment of non-refundable application fee from an insolvency professional agency after his enrolment as a professional member; and
- (c) has –
 - (i) competed the National Insolvency Programme;
 - (ii) completed the Post-Graduate Insolvency Programme;
 - (iii) experience of –

- (a) 10 years in the field of law, after receiving a Bachelor's degree in law; or
 - (b) ten years in management, after receiving a Master's degree in Management or two-year full-time Post-Graduate Diploma in Management; or
 - (c) fifteen years in management, after receiving a Bachelor's degree, from a university established or recognised by law or an Institute approved by All India Council of Technical Education; or
- (iv) ten years' of experience as –
- (a) CA registered as a member of the Institute of Chartered Accountants of India,
 - (b) CS registered as a member of the Institute of Company Secretaries of India,
 - (c) CMA registered as a member of the Institute of Cost Accountants of India, or
 - (d) advocate enrolled with the Bar Council.

For calculating the experience of 10/15 years, an individual can club the experience mentioned in clause (iii) & (iv) {as per the explanation & illustration provided under regulation 5}.

THE CS SKILLSET IS NATURALLY ALIGNED WITH THE IBC

Process fiduciary & governance steward: A Resolution Professional's (RP) first duty is to preserve the corporate debtor (CD) as a going concern and run a predictable, transparent process. CS training in board processes, statutory registers, minute-crafting, and disclosure control is directly portable to IBC—where notice discipline, meeting conduct, voting records, and clean paper trails decide whether plans survive appellate scrutiny. ICSI's curriculum and certificate courses emphasise these granular, practice-side aspects of CIRP and liquidation.

Ethics & independence: The IP's conduct is regulated by the First Schedule Code of Conduct under the IP Regulations—integrity, independence, timeliness, information management, avoidance of conflicts, restrictions on gifts, and clarity around remuneration. CS professionals are already steeped in similar codes; the IPA codes (ICSI IIP/IIPI/IPA-ICMAI) mirror the IBBI code.

Documentation density & statutory hygiene: Insolvency practice is admin-heavy—proof of debt collation, Section 29A diligence records, information memorandum (IM) structure, challenge mechanisms, compliance with circulars and forms. CS are trained to be compliance “systems”—setting calendars, checklists, and repositories

that keep the process on rails. IBBI's frequent circulars (e.g., revised CIRP/liquidation forms, use of e-auction platforms) must be tracked and implemented; CS can do that at scale.

ROLES CS-IPs PLAY ACROSS THE INSOLVENCY LIFECYCLE

(A) In Corporate Insolvency Resolution Process (CIRP)

- **IRP/RP leadership:** Take over the management of the CD upon admission, public announcement, receive and verify claims, constitute the CoC, run the CD as going concern, float Form-G, manage EOIs, coordinate site visits/data rooms, lay evaluation matrices, present and vet resolution plans against Section 30(2), conduct CoC meetings, and file Section 30(6) approval. ICSI's material breaks down these activities and the associated artefacts (IM, minutes, notices, compliance calendars).
- **Process integrity:** Rigorous minute-crafting, resolution and vote logs, and clarity in challenge mechanism and tie-breakers. CS training is directly relevant here.

A CS-IP can preempt issues by preparing an “ESG Annexure” to the IM, attracting capital that increasingly prizes ESG into lending and investment choices.

- **Section 29A diligence:** While CoC has the commercial say, tribunals expect the RP to conduct careful eligibility checks—recent case summaries note courts insisting on substantive diligence rather than mechanical reliance on affidavits.

When acting as Insolvency Professionals (IRP/RP), Company Secretaries oversee the entire resolution process from commencement to submission of the resolution plan. Their responsibilities include:

1. Taking Control of the Corporate Debtor (Section 17 & 18 duties)

A CS-IRP must immediately:

- Take over the management of the corporate debtor (CD).
- Collect and protect all assets and records of the CD.
- Access and take custody of statutory registers, minutes, policies, contracts, and compliance records.
- Secure financial, legal, HR, and operational documentation.
- Ensure business continuity.

Company Secretaries are trained in regulatory records, minute books, registers, and secretarial documentation—making the transition smooth.

2. Public Announcement & Claim Verification (Reg. 6, 13, 14)

A CS-IRP prepares and publishes the statutory public announcement and manages the claims process:

- Creating formats for claims (Form B, C, CA, etc.).
- Verifying claims through documentary evidence.
- Maintaining an updated “List of Creditors”.
- Communicating with operational creditors, homebuyers, employees, and government authorities.

CS expertise in documentation and regulatory scrutiny makes them naturally strong in claim verification.

3. Constitution & Management of the Committee of Creditors (CoC)

A major portion of RP work is CoC governance, including:

- Constitution of CoC based on verified claims.
- Issuing notices, agendas, and minutes (with strict statutory requirements).
- Conducting CoC meetings professionally and neutrally.
- Managing e-voting processes.
- Preparing detailed voting records and noting dissent.

This mirrors the CS core skillset—agenda-setting, minute-writing, board secretarial functions, and decision documentation.

4. Preparation of Information Memorandum (IM)

The IM is central to the resolution process. A CS-RP must:

- Compile financial, legal, tax, litigation, operational, and asset data.
- Gather various certificates (PAN, GST, PF, ESI, pollution compliances).
- Disclose contingent liabilities.
- Maintain confidentiality through NDAs.
- Coordinate with valuers for fair value and liquidation value.

CS familiarity with company law disclosures, listing regulations, due diligence, and corporate documentation ensures that the IM is complete and compliant.

5. Invitation of Resolution Plans (Form-G)

CSRPs handle:

- Drafting and publishing Form-G.

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- Managing EOI (Expression of Interest) submissions.
- Running data rooms and due diligence.
- Ensuring non-discriminatory access to information.
- Preparing evaluation matrices.

6. Evaluation and Vetting of Resolution Plans

A CS-RP must check that plans comply with Section 30(2) requirements, including:

- Payment of CIRP costs.
- Treatment of operational creditors.
- Management and control structure.
- Compliance with law (Companies Act, FEMA, SEBI, tax laws).
- Section 29A eligibility checks.

Company Secretaries, being governance and compliance experts, are best suited to perform this legal vetting.

7. Filing for Approval of Resolution Plan (Section 30(6) & 31)

The CS-RP prepares:

- Application to NCLT.
- All supporting documents.
- Compliance certificates.
- Summaries of CoC decisions.
- Timelines and process adherence reports.

Their precision in compliance filings helps to avoid NCLT observations that delay approvals.

(B) In Pre-Packed Insolvency Resolution Process (PPIRP)

PPIRP is designed for MSMEs, and involves a debtor-in-possession model with creditor oversight. CS play a vital role in:

1. Pre-Initiation Stage

- Advising the CD on preparing a Base Resolution Plan (BRP).
- Ensuring statutory requirements like:
 - ◆ Special resolution by shareholders.
 - ◆ Approval from unrelated financial creditors (66%).
- Preparing all necessary declarations and documents.

2. As the RP during PPIRP

The CS-RP:

- Confirms constitution of CoC.
- Runs a faster, disclosure-based process.
- Places BRP before CoC.
- Invites competing plans if BRP is inadequate.
- Ensures compliance with timelines (120 days).

PPIRP requires high compliance accuracy and documentation discipline—areas CS excel in.

3. Comparison with CIRP

PPIRP has tighter timelines and greater reliance on clean disclosures, making CS ideally suited because of their training in governance, secretarial audit, and legal compliance.

(C) In Liquidation (as Liquidator or Process Manager)

- **Liquidation estate:** Form the estate, invite and verify claims, and realise assets transparently and fairly; distribution under Section 53 waterfall; and dissolution.
- **E-auction platform:** IBBI has moved to a centralised listing and e-auction rail for liquidation assets, consolidating visibility, reducing information asymmetry and improving discovery—an area where CS-IPs can bring discipline in asset memo quality and disclosure.
- **Fee computation clarity:** IBBI's 2023 clarification distinguishes “amount realised” (non-liquid assets converted to cash) from balances already in liquid form (e.g., cash, FDs, quoted equities), protecting stakeholders from over-computation of realisation-linked fees. CS-IPs should reflect this explicitly in fee notes and reporting.

When resolution fails, liquidation begins. A CS-Liquidator's functions are extensive:

1. Taking Custody of Assets (Section 35)

The liquidator must:

- Form the liquidation estate.
- Take control of physical and non-physical assets.
- Secure records and electronic data.
- Identify and preserve intangible assets (IP, data, approvals).

2. Verification and Admission of Claims (Reg. 16–30)

Similar to CIRP, but includes claim admission in liquidation:

- Maintain updated list of stakeholders.
- Handle late claims.
- Communicate reasons for admission/rejection.

3. Asset Sale and Auctions (Schedule I)

CS-Liquidators oversee:

- Preparation of asset sale report.
- Conducting online auctions.
- Ensuring compliance with IBBI's centralised e-auction guidelines.
- Transparent bidding and documentation.

4. Distribution of Proceeds (Section 53)

Liquidators must ensure:

- Statutory priority waterfall is followed.
- CIRP and liquidation costs paid first.
- Secured/unsecured creditors get proportionate distribution.
- Operational creditors treated per statute.

Balances must be handled with strict accuracy—again, a CS's forte.

5. Compliance and Reporting

- Preparing Liquidation Reports.
- Progress reports.
- Assets memorandum.
- Final Report for dissolution.
- Filing applications under Section 54 for dissolution.

Company Secretaries have years of experience in preparing statutory reports, making this process smoother.

(D) Role of Company Secretaries in Voluntary Liquidation

Under Section 59 of the IBC, CS play roles such as:

- Declaration of solvency documentation.
- Ensuring company has no pending litigation/obligations.
- Managing entire liquidation and dissolution.
- Handling filings, stakeholder notices, and distribution.
- Ensuring compliance with timelines and disclosures.

Their governance background is critical in voluntary exits.

(E) Adjacent roles CS can play even without being the RP

Even when not acting as IPs, CS can support the process as:

1. **Advisor to applicants/CoC:** Process mapping, compliance hygiene, and governance fixes for bidders—while respecting independence/conflict rules under the Code of Conduct.

They help with:

- Structuring resolution plans.
- Ensuring legal compliance.
- Preparing documents for NCLT filings.
- Liaisoning with RPs, valuers, lenders.
- Cleaning company records.
- Making statutory filings.
- Rectifying secretarial lapses.
- Preparing the company for sale/transition.

2. **Registered Valuer (after separate qualification):** CS may qualify under Companies (Registered Valuers and Valuation) Rules, 2017 and enrol with ICSI RVO in the SFA/L&B/P&M asset classes.

FEES, CAPS AND INCENTIVES—WHAT CS-IPs MUST KNOW AND DOCUMENT

The post-October 2022 framework: minimum fixed monthly + optional PRIF

The CIRP Regulations (as amended on 13 September 2022) changed the fee architecture for IRPs/RPs appointed on or after 1 October 2022. Key points:

- The applicant/CoC decides the fee of the IRP/RP.
- Minimum fixed monthly fee (Table 1, Schedule II): ₹1 lakh to ₹5 lakh per month, tied to amount of claims admitted. This is a floor, not a ceiling—the CoC may set a higher fixed monthly considering size, sector and complexity.
- Performance-linked incentive fee (PRIF):
 - ◆ For timeliness—incentives for early completion/early filing, subject to an overall ceiling for this head.
 - ◆ For value maximisation—1% of the amount by which the realisable value exceeds the liquidation value. Both are CoC-discretionary and should be pre-minuted.

Separately, every IP must pay an annual regulatory fee to IBBI of 1% of professional fee earned in the preceding FY (revised from 0.25% by IBBI Circular IBBI/IP/56/2022, 24 Nov 2022). This is a statutory levy on the IP (not an automatic estate cost) unless contracted otherwise.

JURISPRUDENCE ON FEES: COC PRIMACY VS. TRIBUNAL GUARDRAILS

- **Commercial wisdom of CoC is paramount:** NCLAT and the Supreme Court have repeatedly underscored that fee fixation is commercial and typically not justiciable, including the decision to grant or deny PRIF. In *Ravindra Kumar Goyal v. CoC of Yashasvi Yarns Ltd.* (2023), NCLAT affirmed NCLT's refusal to interfere with CoC's denial of PRIF.

- **NCLAT, New Delhi in the CIRP of *Crystal Clear Veg Oil Refinery Pvt. Ltd.***, set aside an order of the National Company Law Tribunal (NCLT), Mumbai Bench, which reduced the fee of a Resolution Professional to ₹10,000 per month. The appellate tribunal held that the Adjudicating Authority does not possess the power to fix or reduce the fee of a Resolution Professional without the recommendation of the Committee of Creditors (CoC).

- **Tribunals can compute/settle fees when a dispute exists:** In *Khazim Yusuf Nagarwala v. (Erstwhile RP) Raj Buildhome Pvt. Ltd.* (2024) NCLAT has upheld NCLT's jurisdiction to compute fees/expenses and direct payment where records justify it, particularly when earlier appellate directions so require.

- **Reasoned assessment required:** In *Devarajan Raman v. Bank of India* (2025), the Supreme Court criticised unreasoned reductions of RP fees and remanded for proper assessment, echoing the principle from *Alok Kaushik v. Bhuvaneshwari Ramanathan* (2021) that NCLT retains jurisdiction to determine professional fees linked to CIRP even if the process is set aside.

- **Entitlement period clarity:** NCLAT held that an RP is entitled to fees up to the formal point of withdrawal/hand-back (e.g., Section 12A approval and completion of handover), disapproving drastic reductions without CoC basis. (*Minita D Raja, the erstwhile Resolution Professional in the CIRP of Crystal Clear Veg Oil Refinery Pvt. Ltd.*)

In practice this means:

- Minute the rationale for fixed monthly and PRIF frameworks.
- Maintain granular time-sheets and deliverables (task logs, attendance, filings, stakeholder interactions).
- Segregate OPE (out-of-pocket expenses) from professional fees in all CoC and court filings.

Liquidation fees: avoid overclaiming on “already liquid” assets

IBBI clarified in 2023 that “amount realised” for fee computation excludes cash-equivalents already lying in bank accounts, FDs, quoted shares, or mutual funds. Realisation-linked fees apply to non-liquid assets converted into cash, while “amount distributed” is net of CIRP/liquidation costs. CS-IPs should build these distinctions into their fee memos and stakeholder communications.

OPERATING MODEL FOR CS-IPs: HOW TO RUN A DEFENSIBLE, HIGH-TRUST PROCESS

Build the “hygiene spine” from Day 1

- **Authorisation for Assignment (AFA):** Ensure that the AFA from the IPA is valid; without it, the assignment, cannot be accepted.
- **Master calendar:** Statutory timelines (public announcement, claim verification windows, CoC meetings, Form-G, plan submission, Reg. 40B filings). CS project management strengths shine here.

- **Conflict & independence:** File exhaustive independence declarations. The Code of Conduct requires disclosures of pecuniary/personal relationships with stakeholders entitled under Sections 53/178. Keep a standing conflict register and update it.

Documentation culture

- **Minute like a court reader:** Record who said what, what data was seen, and why a decision was taken—especially fee-related resolutions, PRIF rationale, eligibility assessments (Section 29A), and challenge mechanisms. This is the difference between “process was followed” and “process can be proven”.
- **Information Memorandum (IM):** Build clean, navigable IMs with consistent annexures—assets, liabilities, litigation, regulatory exposures, tax matters, employee liabilities, and carry-forward losses disclosures per IBBI guidance.
- **Valuation orchestration:** Line up RVO-registered valuers with clear deliverables, ensure valuation report identification and traceability where required, and align IM numbers with valuation assumptions.

Stakeholder communications

- **Plain-English notices and FAQs:** Communicate to operational creditors/homebuyers in accessible language; reduce disputes by making claim processes transparent and replicable. (ICAI’s IP handbooks emphasise clarity in stakeholder communications.)
- **Data room governance:** Redact PII and sensitive data, maintain access logs, and ensure parity of information among bidders to avoid allegations of unequal treatment. (IBBI’s ethics handbook reinforces confidentiality duties.)
- **Data discipline and analytics:** As forms, disclosures and structured reporting improve, CS-IPs can help build case-level dashboards for CoC—pending claims, 29A status, auction calendars—reducing surprises and compressing timelines. (IBBI has repeatedly updated forms and process-monitoring mechanisms since 2024–26.)

Auction & sale discipline (especially in liquidation)

- **Centralised e-auction:** Use the mandated platform; improve asset memo quality (photos, geo-coordinates, encumbrances status) and give bidders adequate pre-bid material—this can lift participation and price discovery.
- **Post-sale transparency:** Publish results and bidder counts where permissible, record reasons for failed/retaken auctions, and maintain a documented playbook—helps in later scrutiny.

ESG & disclosure overlays (an emerging differentiator)

- With SEBI’s BRSR Core requiring assurance/assessment for top listed entities and rolling in value-chain disclosures (expectations rising), bidders and lenders increasingly ask hard questions on ESG liabilities (OHS incidents, environmental permissions, privacy controls). A CS-IP can pre-empt issues by preparing an “ESG Annexure” to the IM, attracting capital that increasingly prices ESG into lending and investment choices.

ETHICS AND RISK CONTROLS: GUARDRAILS THAT PROTECT OUTCOMES

The Code of Conduct (First Schedule) is the ethics spine: integrity, objectivity, independence, competence, representation of correct facts, timeliness, information management, confidentiality, restrictions, remuneration and costs, and gifts/hospitality norms. CS-IPs should periodically self-audit against these clauses and IPA guidance.

CONCLUSION

The IBC’s success rests on process fidelity as much as on pricing outcomes. The IBC Law provides the regulatory bridge which ensures the Insolvency ecosystem of India is being served by experts like the Company Secretaries.

In the live theatre of IBC—where minutes matter, disclosures decide, and documentation determines whether a plan survives appeal—a CS-IP’s craftsmanship can be the thin line between a resolution that closes and a process that collapses. With fee architecture now clearer (minimum monthly floors, optional PRIF, regulatory levies) and jurisprudence increasingly emphasising reasonableness and records, CS-IPs who operationalise this article’s toolkits will do more than execute—they’ll elevate the standard of India’s insolvency ecosystem.

CS professionals are uniquely positioned to raise the quality, speed and credibility of resolutions under India’s IBC. As IBC is highly compliance-driven, CS ensure: Adherence to timelines, Clean documentation, Zero-defect filings, Accurate Minutes and Resolutions, Audit readiness. Since the Company Secretaries excels in drafting notices, explanatory statements, reports, and structured communication to the Stakeholder, which ultimately reduce disputes.

The Big Picture says CS are Critical to India’s Insolvency Framework, as India’s insolvency system demands: Legal knowledge, Governance strength, Process discipline, Documentation mastery, Independence and ethical conduct & Stakeholder coordination.

Company Secretaries naturally possess all of these, making them indispensable in: CIRP, PPIRP, Liquidation, Voluntary liquidation, Advisory roles. They elevate the quality of insolvency processes through professional rigor, regulatory understanding, and governance expertise.

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