

Discussion Paper

Amendments to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

The Insolvency and Bankruptcy Code, 2016 (Code) provides for a class of regulated professionals, namely, Insolvency Professionals (IP), who constitute one of the four key pillars of the insolvency regime, other three being the Adjudicating Authority (AA), the Insolvency and Bankruptcy Board of India (Board), and the Information Utilities (IUs). The IPs play an important role in resolution, liquidation and bankruptcy processes of companies, limited liability partnerships (LLPs), partnership firms, proprietorship firms and individuals. Only a person registered as an IP with the Board can render services as an IP under the Code.

2. Several suggestions have been received through public portal and in discussions with stakeholders seeking amendment to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 [IP Regulations]. This paper assimilates those suggestions and solicits comments on the following issues:

- Issue 1: Certificate of Practice for IPs
- Issue 2: Upper age for Undertaking Processes under the Code
- Issue 3: Conflict of Interests in Processes
- Issue 4: Professional Association of IPs with Stakeholders
- Issue 5: Support Services for a Process

After considering the suggestions, the Board proposes to make regulations in this regard, in exercise of its powers and functions under clauses (aa) and (d) of sub-section (1) of section 196 of the Code, to the extent necessary.

Issue 1: Certificate of Practice for IPs

Statement of Problem

3. The Code provides for a two-tier regulatory structure comprising Insolvency Professional Agencies (IPAs), being the front-line regulator and the Board, as the principal regulator of IPs. It envisages a two-stage process for becoming an IP - first enrolment with an IPA as its professional member and then registration with the Board. It obliges the Board and the IPAs to monitor of IPs on ongoing basis and to take disciplinary actions against errant IPs, wherever required. The Bankruptcy Law Reforms Committee (BLRC) explains the rationale of this structure as follows:

“...the Committee believes that a new model of “regulated self-regulation” is optimal for the IP profession. This means creating a two-tier structure of regulation. The Regulator will enable the creation of a competitive market for IP agencies under it... The IP agencies under the Board will, within the regulatory framework defined, act as self-regulating professional bodies that will focus on developing the IP profession for their role under the Code. They will induct IPs as their members, develop professional standards and code of ethics under the Code, audit the functioning of their members, discipline them and take actions against them if necessary.”

4. The registration as an IP is a one-time event, requiring due diligence on the part of both IPAs and the Board. Both have a right to take away the enrolment or registration, as the case may be, under justified circumstances. If the Board cancels registration of an IP, the individual loses

professional membership of the IPA. If an IPA cancels registration of a professional member, he loses registration as IP. Thus, an IP, at all times, is required to possess the enrolment with the IPA as well as the registration with the Board to perform his functions under the Code. Further, if the Board has initiated a disciplinary proceeding against an IP, he is not eligible to undertake a process. It is not clear if an IP can undertake a process if a disciplinary proceeding has been initiated against him by the IPA.

5. An IP is required to satisfy certain conditions for continuation of registration. He is required to pay fee to the Board and IPA, undertake continued professional education, file certain returns and make certain disclosures, etc. If he fails to satisfy any of the conditions, the Board or the IPA, as the case may be, may initiate disciplinary proceeding against him. If no disciplinary proceeding is initiated, the IP remains on the register even if he does not comply with the conditions. A disciplinary process entails significant costs both on the Board or the IPA and the IP concerned. Such cost may not be justified, particularly when the non-compliance is technical and may not warrant even suspension.

6. An individual in employment may wish to register himself as an IP. He cannot do so because he is in employment. However, an IP may surrender his registration to take up employment. An IP may be physically unable to take up a process or an IP above a certain age may not be suitable for demanding processes under the Code. Above a certain age, an IP may like to work with an insolvency professional entity (IPE), rather than taking up processes in his own name.

Proposed Amendment

7. It is proposed to amend the IP Regulations to introduce a concept of Certificate of Practice (CoP) for IPs. Every registered IP needs to have a CoP and get it renewed every year from its IPA subject to meeting certain requirements. These requirements would include: he has paid fees to IPA and the Board, he is not in employment, he has filed all required returns and made all required disclosures, he is under the age of 70, he remains a fit and proper person, he has undertaken continuing professional education, he has no disciplinary proceeding pending against him, etc. The CoP would be valid for one year. The IPs may seek renewal of the CoP one month in advance of its expiry. This will enable a person in employment to be registered as an IP, but he has to quit employment when he wishes to have a CoP. This will avoid disciplinary proceedings for technical non-compliances. An IP without a CoP, however, would be allowed to complete the processes he has in hand.

Economic Analysis

8. The arrangement of CoP will improve monitoring of practising IPs and avoid unnecessary disciplinary processes. It will enable a registered IP to commence and quit practice as and when he wishes depending on his specific requirements. This will, however, increase responsibility on IPAs, which is, in fact, desirable.

Similar Norms

9. It has been observed that many other professions have a practice of CoP, even though they do not have a two-tier regulation of professionals. The Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and Institute of Cost and Management Accountants of India (ICMAI) issue CoP to their members to enable them to practise as a Chartered Accountant, Company Secretary or Cost Accountant. A Chartered Accountant, who does not wish to practise, does not take CoP.

10. The practice of CoP is also found in the field of Accountancy / Insolvency in developed jurisdictions.

10.1 Australia and New Zealand: A member (Chartered Accountant) of the ‘Chartered Accountants Australia and New Zealand (CAANZ),’ who offers accounting services to the public for reward, must hold a Certificate of Public Practice (CPP). The certification protects the public interest and ensures that members meet the high standards expected of them. An Australian member can apply for a CPP provided he has 2 years’ experience in public practice, knowledge of Australian company law and tax, and professional indemnity insurance, and has completed the Public Practice Program (or equivalent) and meets Continuing Professional Development requirements. A New Zealand member can apply for a CPP provided he has two years’ acceptable practical experience as a CA, has completed approved courses in New Zealand Company and Partnership Law and New Zealand Taxation, and has completed the Public Practice Program (or equivalent) in the past two years.

<https://www.charteredaccountantsanz.com/member-services/being-in-public-practice/certificate-of-public-practice>)

10.2. England and Wales: A professional shall be entitled to engage in public practice in the United Kingdom or any other member state of the European Economic Area only if he holds a current practising certificate from ‘Institute of Chartered Accountants in England and Wales (ICAEW)’. A member shall be eligible to hold an ICAEW practising certificate only if he:

- has been a member for two years;
- is compliant with the requirements of Continuing Professional Development;
- understands the Fundamental Principles set out in the Code of Ethics;
- has undertaken to comply with the Council's Professional Indemnity Insurance Regulations;
- is a fit and proper person to hold a practising certificate;
- has passed an aptitude test if relevant;
- has submitted an application in prescribed form along with fees;

<https://www.icaew.com/membership/regulations-standards-and-guidance/practice-management/practising-certificate-regulations>)

10.3. Ireland: Before engaging in public practice, the members of ‘The Institute of Chartered Accountants in Ireland’ need to hold a Practising Certificate (PC) and comply with the Public Practice Regulations & Guidance. A member who holds a PC *inter-alia* is required to demonstrate compliance with the Continuing Professional Development requirements.

[https://www.charteredaccountants.ie/docs/default-source/dept-professional-standards-\(psd\)/support-and-guidance/PPR/ppr-guidance-updated-october-2018.pdf?sfvrsn=2](https://www.charteredaccountants.ie/docs/default-source/dept-professional-standards-(psd)/support-and-guidance/PPR/ppr-guidance-updated-october-2018.pdf?sfvrsn=2))

Implementation

11. The mechanism proposed for governing the CoP is as under:

- (a) A registered IP may apply to the IPA (of which he/she is a member) seeking a CoP, if and when he wishes to practise as an IP. He may take up processes as IRP, RP, AR, Liquidator, Bankruptcy Trustee or any other role which he may perform by virtue of being an IP, only if he/she has a CoP from the IPA.
- (b) An individual may be registered as an IP, even when he is in employment. But he cannot obtain CoP unless he quits employment. He will not be allowed to accept any employment while he is holding a CoP.
- (c) The CoP may be valid for one year from the date of issue. The IP may apply one month prior to expiry date to get the CoP renewed.

- (d) The CoP may be renewed by the IPA subject to fulfilment of the specified criteria: IP has paid fees to IPA and the Board, he is not in employment, he has filed all the required returns and made all the required disclosures, he is under the age of 70, he remains a fit and proper person, he has undertaken continuing professional education, he has no disciplinary proceeding pending against him, and any other criteria as the IPA may consider necessary. The IPA shall verify the fulfilment of such criteria before granting renewal of CoP.
- (e) After surrender of CoP, an IP may be allowed to accept employment subject to meeting the Code of Conduct under the IP Regulations. The CoP shall eliminate the need for temporary surrender of professional membership with IPA and enable an IP to pursue employment while holding both enrolment with IPA as well as registration with IBBI.
- (f) The IPA may suspend the CoP, in addition to that of suspension of membership.
- (g) Issuance of a show cause notice (SCN) by the IPA or by the Board to an IP may revoke his CoP, making him ineligible to take up any further process under the Code, until the SCN is disposed of or on expiry of six months from the date of issue of the SCN, whichever is earlier. He shall, however, be required to complete the processes he has in hand.

Issue 2: Upper age limit for taking up Processes

Statement of Problem

12. The Code provides rigorous market processes for time bound and orderly resolution of insolvency, wherever possible, and ease of exit, wherever required. An IP has an onerous responsibility in all processes under the Code. The processes are demanding, both physically and mentally. It has been observed that a few elderly IPs have sought discharge from the responsibility on account of health issues. Discharge of IPs in the midway hampers the smooth completion of the process. It is, therefore, proposed that the IPs above the age of 70 years may not be issued CoP and they may not be allowed to take up processes in their own name, while they may support younger IPs or work for IPEs in employment.

13. In terms of section 196 of the Companies Act, 2013, an individual above the age of 70 years is not ordinarily eligible to be a Managing Director, Whole time director or Manager, given the demanding responsibilities of such positions. During the corporate insolvency resolution process (CIRP), an IP replaces the Board of Directors and manages the affairs of the company as a going concern. The job of an IP is not less demanding than that of a Managing Director under the Companies Act, 2103. The age limit applicable to a Managing Director may, therefore, apply to IPs.

Economic Analysis

14. It will ensure that younger IPs, who generally have drive and good health, take charge of persons in distress and thereby facilitate closure of processes with the highest efficiency and effectiveness, while the elderly IPs provide support / advisory / consultancy services. Monitoring of the age of IPs will, however, add to regulatory oversight of IPA.

Implementation

15. It is proposed to amend IP Regulations to provide that IPs, who have attained the age of 70 years on the due date of issue of CoP, will not be issued CoP.

Issue 3: Conflict of Interest in Processes

Statement of Problem

16. In addition to specific obligations and prohibitions under the Code and the regulations made thereunder, an IP must always abide by the Code of Conduct as specified in IP Regulations. The Code of Conduct requires that an IP must not only be fair, but also seen to be fair in all his professional dealings. For example, clause 3 of the Code of Conduct requires that an IP must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not. Clause 5 of the said Code of Conduct requires that an IP must maintain complete independence in his professional relationships and must conduct the insolvency resolution, liquidation or bankruptcy processes, independent of external influences. Further, process specific regulations mandate different requirements. For example, regulation 3 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) provides for the eligibility requirements for an IP to act as a resolution professional in a CIRP. Thus, the Code read with Regulations provides enough safeguards to ensure that there is no conflict of interests undermining independence of the IP.

17. The existence of conflict of interests is not explicit in certain situations, though such situations are covered under the general provisions. A few such circumstances, that have come up, are as under:

(a) Mr. X is an RP or Liquidator of CIRP / Liquidation Process of a CD. In the capacity of RP / Liquidator, he may engage/appoint his relatives / related parties for or in connection with work relating to CIRP or liquidation, in any capacity - professional or otherwise. If the CD is a creditor of another company, he may even trigger CIRP of the other company and engage / appoint his relative as IRP. His relatives /related parties may not have conflict of interests with the CD or the other company as such. They, however, have conflict of interests with the IRP, RP or Liquidator of the CD. It is proposed to prohibit engaging / appointing any relative or related party in professional capacity or otherwise, for or in connection with work relating to CIRP or Liquidation of the CD.

(b) An IP may be eligible to provide the services in other capacities such as Advocate, Registered Valuer, Accountant, etc. For example, Mr. X files an application for initiation of CIRP of a CD or appears for the applicant before the Adjudicating Authority when the application is considered. The application may provide that if it is admitted, Mr. X shall be appointed as IRP. This may compromise his independence.

18. It is proposed to prohibit:

(i) an IP, his relatives and his related parties from acting as an IRP/RP/Liquidator in a process where any of them has rendered professional services in any other capacity in connection with the process; and

(ii) an IP, his relatives and his related parties from rendering professional services in any other capacity in connection with a process if any of them is acting as an IRP/RP/Liquidator in the process.

Economic Analysis

19. An IP is an officer of the Court. He has adjudication responsibilities in certain circumstances. He is guiding the processes for value maximisation for stakeholders. His direct or indirect interest must not compromise the interests of the stakeholders or allow a wrong commercial decision. It will prevent cosy relationship between an IP and a stakeholder. This may not require a detailed surveillance mechanism to detect such relationships. This may be

ensured by disclosures by IPs as well as the Board and IPAs may take notice of complaints in this regard.

Similar Norms

20. Most of the regulators of professions have prescribed a Code of Conduct for their members. The jurisdictions abroad have detailed framework to address conflict of interests of insolvency practitioners.

20.1 Australia: Australian Restructuring Insolvency and Turnaround Association (ARITA) rules require that before accepting an appointment as liquidator or administrator of an insolvent company, the insolvency practitioner must evaluate his or her relationships with the company and with those who are involved or have an interest in its affairs. The three main step of the evaluation process are:

Step 1: The task is to ensure that the insolvency professional is not prohibited or disqualified from acting by the express laws on disqualification for reason of a specific connection that are contained in the Corporations Act, 2001.

Step 2: It involves looking out for other relationships which the Act deems to be, prima facie, of interest to creditors of the company. If such a relationship exists, the insolvency professional must evaluate whether the relationship is “relevant”. Unless such a relationship is “trivial”, it will be “relevant”. If the insolvency professional is of the view that there is no relevant relationship, he or she may accept appointment. His or her view that there are no relevant relationships must be declared in writing in the Declaration of Relevant Relationships presented to creditors.

Step 3: In the evaluation process if the insolvency professional considers that there **is** a relevant relationship, the relevant relationships need to be evaluated to see whether they give rise to, or are likely to give rise to, a conflict of interest or a conflict of duty for the insolvency professional in the performance of his or her obligations. If the insolvency professional forms the view that because of a relevant relationship he or she has or is likely to have a conflict of interest or a conflict of duty, he or she must decline to take the appointment. On the other hand, if the insolvency professional’s view is that there is no such conflict, the insolvency professional must – in the written Declaration of Relevant Relationships – give details of the relationship and explain why he or she believes that it does not and will not give rise to a conflict of interest or a conflict of duty.

20.2 United Kingdom: The UK courts in a series of judgments have provided useful guidance on the level of previous professional engagement which would rule an administrator out of accepting a role in the insolvency of a company. In the matter of *VE Vegas v Shimmers*, the board and management of Company A formed a new company (Company B). Company A then engaged an accounting firm that advised it to conduct a pre-pack sale to Company B and also advised on insolvency options. When Company A went into administration, the administrators were appointed from the same firm, leading Company A’s creditors to apply to have them removed on the basis that an investigation was needed into whether there were breaches of duty by the directors and/or the accountants in relation to the sale of Company A’s assets. The Court removed the administrators, finding that they were conflicted because their firm was bound up in the process by reason of their contractual retainer.

20.3 New Zealand: The RITANZ Code of Conduct has clauses: (i) Clause 2.1.1 sets out that the test for independence focuses on the nature of the contact and the relationship between the practitioner and the insolvent company, its creditors or directors prior to the appointment, and (ii) Clause 2.4 requires that practitioners provide a declaration of independence to creditors as

soon as possible. As part of the declaration, practitioners are required to declare whether they provided any advice to the insolvent company, or its directors before the appointment, and why they believe that such advice does not give rise to a conflict of interest. The Courts are likely to have regard to professional standards in assessing whether there was an actual or perceived conflict of interest, or lack of independence.

Proposed Amendment

21. It is proposed to amend the IP Regulations to make explicit provisions for the following:
- (i) to prohibit an IP from engaging / appointing any relative or related party in professional capacity or otherwise, for or in connection with work relating to CIRP or Liquidation of the CD.
 - (ii) to prohibit an IP, his relatives and his related parties from acting as an IRP/RP/Liquidator in a process where any of them has rendered or is rendering professional services in any other capacity in connection with the process; and
 - (iii) to prohibit an IP, his relatives and his related parties from rendering professional services in any other capacity in connection with a process if any of them is acting or has acted as IRP/RP/Liquidator in the process.
 - (iv) to require an IP to make evaluation and satisfy himself that he has no conflict of interests in any of the above three situations and make this evaluation public wherever he has any doubt.

Issue 4: Association with Stakeholders

Statement of Problem

22. The present regulatory framework addresses conflict of interests arising from past and present relationships of an IP. However, an IP may compromise his position in promise of return in future, after he completes a process or after he ceases to be an IP. He may take up an employment or have a professional association with the CD, successful Resolution Applicant, Creditors and their related parties. It is proposed to amend IP regulations to prohibit an IP and his relatives from engaging in any employment with the CD, successful Resolution Applicant, Major Creditors (Creditors having 10% voting power) and their related parties, for a period of two years from the date of closure of the process concerned, unless the employment is through an open competitive examination. It is also proposed to amend regulations to prohibit an IP and his relatives from providing professional services to the CD, the successful Resolution Applicant, Major Creditors (Creditors having 10% voting power) and their relatives for one year unless a disclosure is made to the IPA.

Economic Analysis

23. The restriction on an IP to seek assignment or employment with the stakeholders of the processes handled by him will mitigate attempts by stakeholders to lure the IP by offering assignment/employment post completion of processes. This will facilitate realisation of the objectives of the Code. The major inputs for violation will be through complaints and therefore, the costs for surveillance may not be significant.

Issue-5: Support Services for a Process

Statement of Problem

24. An IP is the driving force and the nerve-centre in an insolvency proceeding who is responsible for getting the best possible outcome in each case. A whole array of statutory and legal duties and powers is vested in him. Section 17 of the Code provides that from the date of his appointment, the management of the affairs of the CD vest in the IRP. The powers of the

board of directors or the partners of CD stand suspended and are exercised by IRP. Section 20 of the Code requires the IRP to make every endeavour to protect and preserve the value of the property of CD and manage the operations of the CD as a going concern. Section 23 requires the RP to conduct the entire CIRP. There are similar provisions providing for duties of Liquidator and Bankruptcy Trustee.

25. The Code facilitates and empowers an IP to discharge his duties. He may hire the services of any professional he considers necessary. He, however, renders so many services and carries so many activities which he himself needs to do and for which no professional service is required. For example, when he takes over a CD under CIRP, he needs to take inventory of stock; needs to verify each claim; and may need services of an Advocate and an Accountant. While he may hire professional Accountants and Advocates, he himself needs to take inventory and verify claims. There are so many tasks which an IP is required to perform himself. In case of large CDs, it may not be humanly possible for the IP alone to carry out all tasks. He needs support of some other individuals, other than professionals.

26. The professionals are well-qualified in their work. Their conduct and performance are monitored by the respective regulator of the profession. They are engaged at arm's length distance. They work under supervision of the IP. However, other individuals hired by an IP may not be qualified in the area of work and are not subject to any regulatory discipline. The IP, therefore, needs to have his own employees and train them for various tasks in the processes under the Code. It may not be possible for every IP to have enough employees all the time to carry out all tasks an IP may have from time to time. In such cases, he may be a member of an IPE and use the services of the IPE.

27. In the interest of quality support services with accountability, it is proposed to mandate that an IP may use either his own staff for support services or hire support services from an IPE of which he is a director or partner. He cannot hire support services from any other source nor can he outsource the services of an IP. When he uses his own staff, he will pay to employees out of his professional fee. When he hires support services from an IPE, the fee for support services and his professional fee shall be paid separately. This is in addition to the current arrangement of hiring professional services.

Proposed Amendment

28. It is, therefore, proposed to amend IP Regulations to require that an IP may use his own staff for support services or obtain any support services from an IPE of which he is a director or partner.

Economic Analysis

29. This will bring in professionalisation of support services and increase accountability and consequently better outcome from processes under the Code.

Public Comments:

30. This is issued in pursuance to regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. The Board accordingly solicits comments on:

- a. discussions points mentioned in this discussion paper; and
- b. any specific regulations in the draft Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2019, placed at **Annexure - A.** by 28th May, 2019.

31. Comments may be submitted electronically by 28th May, 2019. For providing comments, please follow the process as under:

- (i) Visit IBBI website, www.ibbi.gov.in;
- (ii) Select 'Public Comments'; and then select 'Discussion paper – IP Regulation';
- (iii) Provide your Name, and Email ID;
- (iv) 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.
- (v) Select the kind of comments you wish to make, namely,
 - a) General Comments; or
 - b) Specific Comments.
- (vi) 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; and
 - 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 or regulation / sub-regulation number, by clicking on more comments and repeating the process outlined above from point 31 (v) onwards.

(x) Click 'Submit', if you have no more comments to make.

**GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, _____ March, 2019**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION
New Delhi, ____ March, 2019**

Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2019

IBBI/2018-19/GN/REG0__ - In exercise of the powers conferred by sections 196, 207 and 208 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 Professionals) Regulations, 2016 namely: -

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2019.
(2) They shall come into force from the date of publication in the Official Gazette.
2. In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter referred to as the principal regulations), in regulation 7, in sub-regulation (2), after clause (bb), the following sub-regulations shall be inserted, namely: -

“(bc) hold a certificate of practice issued by the insolvency professional agency with which he is enrolled, before giving his consent to accept any assignment as interim resolution professional, resolution professional, authorised representative, liquidator or a bankruptcy trustee, as the case may be, under the Code;

(bd) ensure that appointment of any other professional, if required, is done at arms’ length relationship, for accomplishment of specific task and for specific period of time, and the task assigned is completed in a time-bound manner and the remuneration fixed thereof is commensurate with the assigned task;

(be) not source any support services from a person other than a recognised insolvency professional entity to which he is partner or director.”.

3. In the principal regulations, in the First Schedule, -

(a) after clause 3, the following clause shall be inserted, namely: -

“3A. An Insolvency Professional shall ascertain whether any conflict of interest arises before giving his consent for acceptance of any assignment.”;

(b) for clause (23), the following clauses shall be substituted, namely: -

“23. An insolvency professional shall not accept any employment till such time, as he holds a certificate of practice issued by the insolvency professional agency with which he is enrolled.

23A. An insolvency professional who has handled a process under the Code in the capacity of interim resolution professional, resolution professional, authorised representative, liquidator or bankruptcy trustee, as the case may be, shall not accept any employment from any creditor having more than ten percent voting power or from the successful resolution applicant or their related parties, until a period of two years have elapsed from the date of his cessation from such process.

23B. An insolvency professional, who has handled a process under the Code in the capacity of interim resolution professional, resolution professional, authorised representative, liquidator or bankruptcy trustee, as the case may be, shall not accept any professional engagement from any creditor having more than ten percent voting power or successful resolution applicant or their related parties, until a period of one year has elapsed from the date of his cessation from such process.”

(Dr. M. S. Sahoo)
Chairperson
[ADVT . - _____]

Note: The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 were published in the Gazette of India Extraordinary vide notification No. IBBI/2016-17/GN/REG003 on 29th November, 2016 and were subsequently amended by,

- (1) Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2018 vide notification number IBBI/2017-18/GN/REG027 dated 27th March, 2018 and,
- (2) Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2018 vide notification number IBBI/2018-19/GN/REG036 dated 11th October 2018.