



# INSOLVENCY PROFESSIONALS

ROLE AND FUNCTIONS OF INSOLVENCY PROFESSIONALS

# INSOLVENCY PROFESSIONAL

**INSOLVENCY PROFESSIONAL** means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the board as an insolvency professional under section 207.

**INSOLVENCY PROFESSIONAL AGENCY** means any person registered with the Board under section 201 as an insolvency professional agency


# OBLIGATION OF INSOLVENCY PROFESSIONAL

Every insolvency professional shall abide by the following code of conduct :-

- a) To take reasonable care and diligence while performing his duties
- b) To comply with all requirements and terms and conditions specified in the bye- laws of the insolvency professional agency of which he is a member
- c) To allow the insolvency professional agency to inspect his records
- d) To submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member
- e) To perform his functions in such manner and subject to such conditions as may be specified


# ELIGIBILITY

Following individual shall not be eligible to be registered as an insolvency professional if he :-

- a) Is a minor or
  - b) Is not a person resident in India
  - c) Does not have qualification and experience as specified in regulation
  - d) Has been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence
  - e) Person convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more
  - f) Is an undischarged insolvent or has applied to be adjudicated as an insolvent
  - g) Has been declared to be unsound mind
  - h) He is not a fit and proper person
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# QUALIFICATION AND EXPERIENCE

An individual shall be eligible for registration if he :-

- a) Has passed the National Insolvency Examination
  - b) Has passed the Limited Insolvency Examination and has 15 years of experience in management, after he received a Bachelor's degree from university established or recognized by law
  - c) Has passed the Limited Insolvency Examination and has 10 years of experience as
    - 1) A chartered accountant enrolled as a member of the Institute of Chartered Accountants of India
    - 2) A Company Secretary enrolled as a member of the Institute of Company Secretaries of India
    - 3) A Cost Accountant enrolled as a member of the Institute of Cost Accountant of India
    - 4) An advocate enrolled with a Bar Council
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# RECOGNITION OF INSOLVENCY PROFESSIONAL ENTITIES

- A limited liability partnership, a registered partnership firm or a company may be recognised as an Insolvency Professional entity if :-
  - a) A majority of the partners of the limited liability partnership or registered partnership firm are registered as insolvency professionals or
  - b) A majority of the whole- time directors of the company are registered as insolvency professionals as the case may be.
- A person eligible to be insolvency professional entity may make an application to the Board in **FORM – C** of the Second schedule.
- If the Board is satisfied after inspection or inquiry as it deem necessary that the applicant is eligible as insolvency professional entity, it may grant a certificate of recognition as an insolvency professional entity in **FORM – D**.
- An insolvency professional entity shall be jointly and severally liable for all acts or omissions of its partners or director as insolvency professionals committed during such partnership or directorship

# CODE OF CONDUCT FOR INSOLVENCY PROFESSIONALS

- Integrity and objectivity
- Independence and impartiality
- Professional competence
- Representation of correct facts and correcting misapprehensions
- Timeliness
- Information management
- Confidentiality
- Occupation, employability and restrictions
- Remuneration and costs
- Gifts and hospitality

# REGISTRATION

Professional member enrolled with insolvency professional agency may make an application to Board in **FORM – A** of the second schedule with non-refundable fee of 10,000 rupees to the Board

Within 7 DAYS

The Board shall acknowledge the application

Within 60 Days from  
the receipt of the application

If Board satisfy after inspection and inquiry as it deems necessary that the applicant is eligible , may grant a certificate of registration to the applicant to carry in the activities of an insolvency professional in **FORM – B** of the second schedule



# REFUSAL TO GRANT CERTIFICATE

If Board is of prima facie opinion that the registration ought not to be granted on receipt of application

Within 45 Days

Board shall communicate the reasons for forming such opinion to the applicant

Within 15 Days

Board shall give the applicant an opportunity to explain why his application shall be accepted

Within 30 days from receipt of explanation

After considering the explanation given by the applicant the Board shall communicate its decision to :-

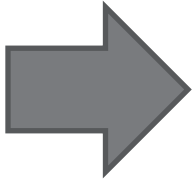
- a) Accept the application, along with the certificate of registration
- b) Reject the application by an order giving reasons

# **FUNCTIONS OF INSOLVENCY PROFESSIONAL**

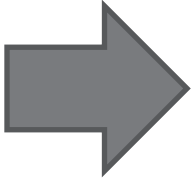
**INSOLVENCY PROFESSIONAL shall take actions as may be necessary in the following matters:**

- a) A fresh start order process under chapter II of part III**
- b) Individual insolvency resolution process under chapter III of part III**
- c) Corporate insolvency resolution process under chapter II of part II**
- d) Individual bankruptcy process under chapter IV of part III**
- e) Liquidation of a corporate debtor firm under Chapter III of part II**

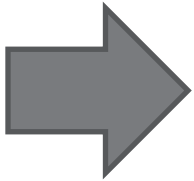
ROLE AND OBLIGATION  
OF INSOLVENCY  
PROFESSIONAL IN  
CIRP



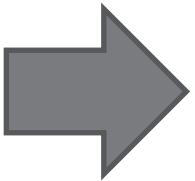
IP shall give written communication in FORM- 2 to the applicant for the appointment as Interim Resolution Professional.



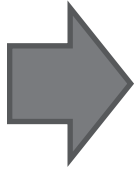
IP shall make public announcement of the CIRP within maximum 3 Days on the appointment as an interim resolution professional in FORM – A [S.-15]



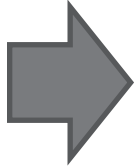
IP shall appoint 2 registered valuer within 7 days of his appointment to determine the liquidation value of the corporate debtor.



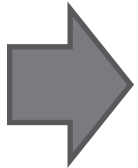
IP shall manage the affairs of corporate debtor on appointment as interim resolution professional [S.-17]



IP shall receive and collate all the claims submitted by the creditors to him, pursuant to the public announcement [S.-18]



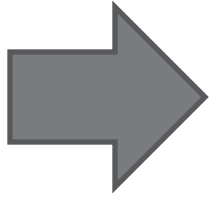
IP shall verify every claim as on the insolvency commencement date within 7 days from the last date of receipt of the claim



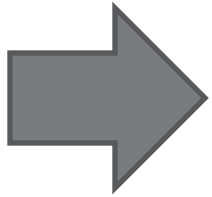
IP shall after verification of the claim of creditors , make list of the creditors



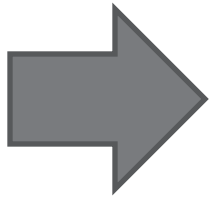
Where the amount claimed by the creditor is not precise due to any contingency or other reason, IP shall make the best estimate of the amount claim based on the information available with him.



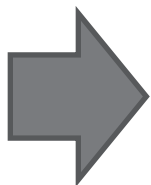
IP shall after collation of the claims received against corporate debtor , constitute a committee of creditors and shall file the report certifying constitution of the committee to NCLT [S. - 21]



IP shall convene first meeting of committee within 7 days of filing the report and may convene meeting when he considers necessary and convene a meeting of the committee if a request to that effect is made by the members of the committee representing 33% of voting right [S.-24]

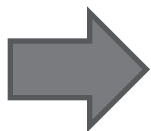


IP shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the board for formulating a resolution plan. [S. - 29]

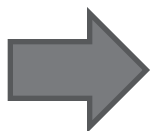


IP shall examine each resolution plan received by him to confirm that each resolution plan-

- a) Provide for the payment of CIRP cost in manner specified by board
- b) Provides for the repayment of debts of OC as provided by board which shall not be less than the amount to be paid to the OC in the event of a liquidation of the CD
- c) Provides for the management of the affairs of the CD after approval of the resolution plan
- d) Does not contravene any provision of law and conforms to such other requirements as may be specified by Board




IP shall present resolution plan to committee for its approval and submit it to the NCLT after its approval.



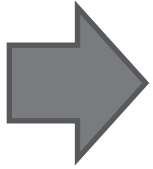
IP shall forward all the records relating to the conduct of the corporate insolvency resolution process to the Board.

# CHALLENGES FOR INSOLVENCY PROFESSIONALS

1. **Timeliness** – The duties entrusted on an IRP that are to be completed within 30 days is a difficult task specially with regards to compilation of claims.
  2. **Number of creditors** – The number of operational creditors is in large number which in turn makes verification of claims a difficult task.
  3. **Relevant fee** – it is difficult on part of Interim insolvency professional to ascertain the appropriate fee for their rendered service. what criteria should actually be taken into consideration while calculating the fee is an area of concern.
  4. **Appointment of professional for assistance** – depending upon the size of work involved, interim resolution professional do need to hire professionals for their assistance. What shall be the fee for the same, how many professionals maximum can be appointed or whether any bar should be imposed on the maximum fee that can be paid to the professionals for assistance.
  5. **Cooperation from staff** - companies which are a going concern are not really willing to share the information required by the IRP.
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ROLE AND OBLIGATION OF  
INSOLVENCY  
PROFESSIONAL IN  
LIQUIDATION PROCESS

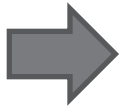


IP shall prepare and submit to NCLT following reports :-

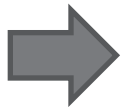
- a) A preliminary report within 75 days from the liquidation commencement process
- b) An asset memorandum
- c) Progress report
- d) Sale report
- e) Minutes of consultation with stakeholder
- f) The final report prior to dissolution



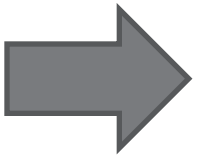
IP shall maintain registers and books in relation to the corporate debtor and preserve for eight years



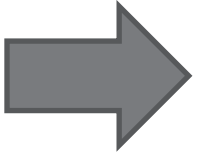
IP shall make public announcement in FORM B of schedule II within 5 days from his appointment



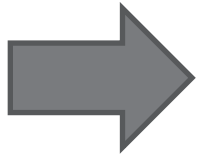
IP shall form an estate of the assets mentioned in [S.- 36(3) ] which will be called the liquidation estate in relation to the CD then prepare an asset memorandum within 75 days from the liquidation commencement date.



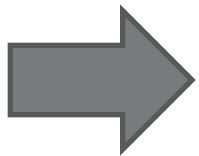
IP shall receive or collect the claims of creditors within 30 days from the date of commencement of liquidation process [S. – 38]



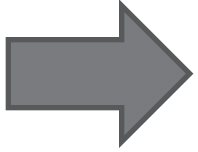
IP shall verify the claims within 30 days from the last date for receipt of claims and may either admit or reject the claim. [S. – 39]



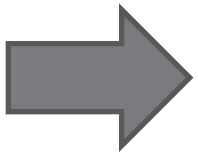
IP shall determine the value of claims admitted in such manner as specified by the Board [S. – 41]



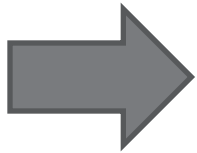
IP shall make list of the stakeholder on the basis of the claim submitted and accepted.



IP shall appoint at least 2 registered valuers to value the assets and with the permission of NCLT distribute amongst the stakeholder, an asset that cannot be readily or advantageously sold due to its peculiar nature or other circumstances

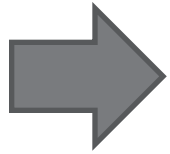


IP shall apply to the NCLT for avoidance of preferential transaction if IP is of the opinion that the CD has at a relevant time given a preference in such transactions and in such manner as laid down in [S. 43 (2) ] to any person as referred in [S.- 43 (4) ]

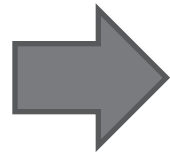


If IP on an examination of the transactions of the CD referred to on [S. - 43(2) ] determines that certain transactions were made during the relevant period which were undervalued then IP shall make application to NCLT.

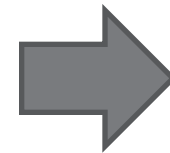
ROLE OF INSOLVENCY  
PROFESSIONAL IN  
FRESH START ORDER  
PROCESS



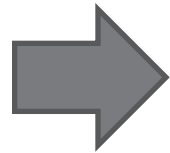
IP may make application to the NCLT on behalf of the debtor, who is unable to pay debts and fulfills the conditions specified in [S. – 80] for fresh start fro discharge of his qualifying debt.



IP shall examine the application made by CD fro fresh start within 10 Days of his appointment and submit a report to the NCLT either recommending acceptance or rejection of the application[S. – 83]

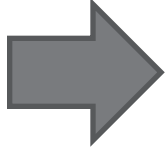


IP shall consider and examine the objection made by the creditor to whom a qualifying debt is owed. On the basis of examination IP shall prepare a list of qualifying debts for the purpose of discharge order. [S. – 86]

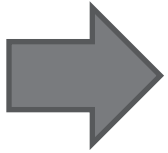


IP may submit an application to the NCLT seeking revocation of its order on admission or rejection of application made for fresh start.[S.-91]

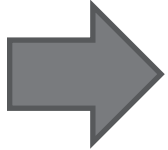
ROLE AND OBLIGATION OF  
INSOLVENCY  
PROFESSIONAL IN  
INSOLVENCY RESOLUTION  
PROCESS



IP may make an application for insolvency resolution process on behalf of debtor who committed default to NCLT [S.-94]

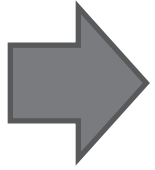


IP shall examine the application for insolvency resolution plan by debtor or creditor within 10 days of his appointment and submit a report to the NCLT recommending for approval or rejection of the application.[S.-99]

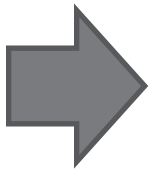


IP shall register the claims of the creditors and prepare a list of creditors on the basis of the information of claim of creditors registered [S.-103-104]

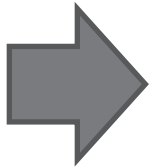




The IP shall submit the repayment plan along with his report on such plan to the NCLT within 21 days from the last date of submission of claims.[S.-106]



IP shall conduct the meeting of the creditors and prepare a report of the meeting on repayment plan. [S.-108&112]



IP shall supervise the implementation of the repayment plan. IP shall within 14 Days of the completion of the repayment plan, forward to the person who are bound by the repayment plan and NCLT.[ S.[116;117]

ROLE AND FUNCTIONS  
OF BANKRUPTCY  
TRUSTEE (BT)



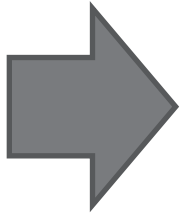
BT shall register the claims of the creditors within 7 days of the publication of the notice than prepare the list of the creditors within 14 days from the bankruptcy commencement date.[S.-131&132]



BT shall convene the meeting of creditors and decide the quorum of the meeting than conduct the meeting of the creditors.[S.-134]

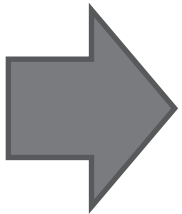


BT shall conduct the administration and distribution of the estate of the bankrupt and shall convene a meeting of the committee of creditors on completion of the administration and distribution of the estate with a report of the administration of the estate for its approval by the committee of creditor within 7 days of the receipt of the report.



BT shall apply to the NCLT for a discharge order :-

- a) On the expiry of 1 year from the bankruptcy commencement date
- b) Within seven days of the approval of the committee of creditors of the completion of administration of the estates of the bankrupt [S.-138]



BT shall perform following functions:-

- a) Investigate the affair of the bankrupt
- b) Realize the estate of the bankrupt
- c) Distribute the estate of the bankrupt.



# Śāsttra Legal

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## *Advocates & Solicitors*

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